



Jeffrey Lalloway, Mayor Pro Tem

[cityofirvine.org](http://cityofirvine.org)

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575

949-724-6233

October 27, 2015

The Honorable Glenda Sanders  
Presiding Judge  
Orange County Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

RE: City of Irvine Response to Orange County Grand Jury Report  
"Irvine' Great Park: A Legacy Of Hubris?"

Dear Honorable Judge Sanders:

The City of Irvine has reviewed the Orange County Grand Jury Report, "Irvine' Great Park: A Legacy of Hubris?" released June 30, 2015. The City of Irvine appreciates the role of the volunteer members of the Grand Jury and thanks them for their time and effort. As requested by the Grand Jury, and in accordance with California Penal Code Sections 933 and 933.05, this letter constitutes the City of Irvine's response to the findings and recommendations contained in the report.

The City of Irvine embraces planning principles and agrees that sound management is essential to good and efficient governance. The City is consistently recognized as a premier master planned community and continues to receive accolades for its stewardship. Despite budget cuts during the recession, the City maintained services to its residents and is well-positioned to continue to provide high quality services, including park planning and construction, to the community in the near-term and in the future.

The Orange County Great Park Corporation Board of Directors (Board) is responsible for creating policy for the design, development, operations, and maintenance of the Orange County Great Park (Great Park) and its infrastructure.

In November 2014, Irvine voters enacted Measure V, which was placed on the ballot by the City Council of the City of Irvine (City Council) to bolster checks and balances on Great Park expenditures and to reinforce safeguards to ensure individuals that report suspected wrongdoing in the planning, design, construction or operation of the Great Park will be protected from retribution.

## **FINDINGS**

***F.1. The Irvine City Council originally had a vision of a metropolitan park that would rival Central Park in New York, Golden Gate Park in San Francisco, and Balboa Park in San Diego, but neglected to follow standard industry practices in managing such a large project.***

The City of Irvine agrees with this finding. The prior City Council's initial approach to managing this ambitious regional project was deeply flawed in the identification and implementation of standard industry practices. To correct this situation, the existing City Council has identified and implemented a new approach that will result in the opening of significant park improvements in 2016, and development of over 68% of the Great Park by 2019. The cornerstone of this new approach is the City's public-private partnership with Heritage Fields El Toro, LLC (Heritage Fields).

The City is pursuing a thoughtful and inclusive approach for the next phase of major park development, which will occur in the area designated "Cultural Terrace" on the Great Park Master Plan. Specifically, the City is working with Heritage Fields to prepare joint planning studies for the development of the Cultural Terrace. Those studies are an important early step toward further metropolitan park development that will combine municipal land assets with private resources to reduce financial risk to the City, and allow the City to gain early insight about project feasibility and customer demand prior to detailed design and construction of future park amenities.

***F.2. From the outset, with the City of Irvine assuming a land developer role, the project was poorly managed and did not follow conventional program management principles. There was excessive political control, influence, and interference over the Great Park project. The City allowed individuals, including some elected officials to make technical decisions without ensuring that these individuals were qualified or experienced to make such decisions. Basically, the City abandoned sound project management principles.***

The City of Irvine agrees with this finding. To address these flaws, in 2013 the City Manager implemented a reorganization to fully integrate the operations of the Great Park within existing City departments. Program and project management functions are now under the direct oversight of the City Manager's Office and all engineering review and technical recommendations are managed in the City's Public Works Department under the supervision of the City Manager. We are now confident that the same best management practices that have led to the success and acclaim of all other operations will lead to the future success of the planning, construction and operation of the Great Park.

***F.3. The organizational structure established by the Irvine City Council was such that total control over the project rested with the City Council and the Orange County Great Park Corporation was relegated to an advisory role.***

The City of Irvine agrees with this finding. In 2003, the City Council established the Orange County Great Park Corporation (Corporation). The Corporation had a nine-member Board of Directors consisting of the five City Council members and four other at-large members from throughout the County. This was intended to allow for regional representation, and was similar to models used to govern the development, operation, and maintenance of other large metropolitan parks.

However, as we came to realize, there was a fundamental flaw in this organizational model. All of the ultimate costs and liabilities of park development, operations, and maintenance rested with the City of Irvine. That financial reality lead the City to assume primary policymaking authority for the Great Park. The Corporation continues to exist, but has a largely advisory role to the City Council.

That shift in roles was first memorialized in City Council Resolution No. 06-42, which restated and clarified the governing structures and responsibilities of the City of Irvine and the Corporation. More specifically, Resolution 06-42 clarified the following roles and responsibilities:

**A. General**

1. All employees of the Corporation were employees of the City of Irvine.
2. Funds for the development of the Great Park would be managed in segregated accounts by the City of Irvine.
3. Operations and maintenance of the Great Park would be based on self-sustaining budgets.

**B. Orange County Great Park Corporation Board of Directors**

1. The Board is to recommend essential policy adoption concerning planning, design, construction, operations, and maintenance of the public portions of the Great Park.
2. The Board is responsible for providing direction and oversight for the planning, design, and construction of the Great Park.
3. The Board is responsible for ensuring that applicable policy guidelines and design principals are implemented.
4. With limited exceptions, the Board has a duty to recommend all change orders, contract dispute resolutions, and final acceptance of construction for approval by the City Council.

**C. Orange County Great Park Corporation Staff**

1. Corporation staff has responsibility for implementation of contracts (although authority to make contracts rests with the City acting through the City Council).
2. Corporation staff is responsible for interfacing with the design team, program manager, and construction general contractors.
3. Corporation staff serve as the direct interface with utilities and regulatory agencies, and make recommendations for utility agreements and permit

applications to the Board, which in turn serves as a recommending body to the City Council.

4. Corporation staff has the authority to initiate fund development fostering relationships with public and private partners to construct and operate the Great Park. Corporation staff also must present to the Corporation Board (for recommendation to the City Council) the approval of fees, concessions, revenue generating facilities, programming and services.

#### **D. City of Irvine**

1. The City must initiate and approve land use modifications, and will exercise authorities in all matters relating to land use, zoning, and issuance of financing district bonds and the expenditure of bond proceeds and the disposition of funds.
2. The City will consider contracts and property instruments relating to the Great Park and will appropriate the allocation of funds in a manner consistent with City policies. The City has final authority over all financial matters relating to the Great Park.
3. The City is responsible for policy decisions related to the disposition of publicly held land and the expenditure of public funds. The City will manage and invest funds for the Great Park in a manner consistent with the City's adopted investment policy.
4. Prior to the completion of the design for the Great Park, the City is to determine whether the City, the Corporation, or some combination thereof will operate, program, and maintain the Great Park.

Two months later, in June 2006, the City Council adopted Resolution No. 06-71 to establish the protection of the City's General Fund in the planning, construction, operation and maintenance of the Great Park. Specifically, Resolution 06-71 prohibited (1) use of General Funds on the planning, construction, operation or maintenance of the Great Park, (2) issuance of bonds or other financial instruments secured by General Funds, where the bond proceeds would be used for the planning, construction, operation or maintenance of the Great Park, and (3) inter-fund loans to the Corporation for planning, construction, operation or maintenance of the Great Park.

The general concepts found in Resolutions 06-42 and 06-71 were put before the voters in Measure R, adopted in November 2008. In addition, Measure R clarified that "newly created revenues generated within the Orange County Great Park and the adjoining Heritage Fields development ... shall be available, although not required, for the operation and maintenance of the Orange County Great Park." While Measure R expired in 2012, the underlying City Council adopted resolutions remain in place.

As a further clarification of roles and responsibilities, in January 2013 the City Council reiterated that the personnel of the Corporation are employees of the City and shall operate under the general supervision of the City Manager. The City Council also approved an amendment to the Corporation's Articles of Incorporation to streamline and



eliminate inconsistencies regarding the governance of the Corporation by amending the composition of the Board to consist solely of the City Council. As a result of these 2013 changes, the Board has been able to work more efficiently and with greater public accountability.

*F.4. Many California communities, including Mission Viejo, Belmont, Watsonville, and Norwalk have ordinances restricting elected officials from interfering in operational activities under a city manager.*

The City of Irvine agrees with this finding. Existing Irvine Municipal Code Section 1-3-109, entitled "Council-Manager relations," adopted in 1976, prescribes the manner in which the City Manager is to take direction from the City Council and its members. Section 1-3-109 provides in full as follows:

The City Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinates of the City Manager. The City Manager shall take his or her orders and instructions from the City Council only when sitting in a duly convened meeting of the City Council and no individual Council member shall give any orders or instructions to the City Manager.

The provision, it should be noted, is similar to that of cities governed under the "Council-Manager" form of government throughout the state and the nation.

The City Council appreciates the Grand Jury's drawing attention to this provision, and will emphasize adherence to this pre-existing law in the future.

*F.5. Appropriate transparency over the project was lacking. The City Council and the OCGPC did not publicly reveal the estimated true costs to build the park as originally designed as well as other non-capital expenditures.*

The City of Irvine disagrees partially with the finding. While the City agrees that appropriate transparency for the project was lacking, a review of depositions taken during the current City Council-commissioned audit of the early years of the Great Park demonstrates that this shortcoming is not due to failures of the City Council or the Board, acting as a whole. Rather, the lack of transparency is due to the failure of an individual member of the City Council and the Board to disclose information that was made uniquely available to that person. The following chronology details the Great Park construction cost estimates that were (and were not) publicly disclosed:

- A. January 28, 2003 (Public Meeting and Public Announcement):** City Council announces in a press release that the total development costs for the Great Park

would be **\$353 million**. This same estimate appears in a newsletter to City residents in the Winter of 2003.

- B. **December 16, 2004 (Public Meeting)**: The Board approves business plan for the development of the Great Park, with an anticipated budget of **\$401 million**.
- C. **November 2005 (Not a Public Estimate)**: Board Chair Agran is informed by Ken Smith, the soon-to-be-selected master designer of the Great Park, that “if we were selected, we believe all of this can be built for **\$998 million**.”
- D. **January 23, 2006 (Public Announcement)**: Board Chairman Agran announces **\$401 million** budget for the Great Park.
- E. **January 25, 2007 (Public Meeting)**: Great Park Design Studio makes proposal to proceed with design development of the Great Park. Budget is assumed to be approximately **\$400 million**.
- F. **July 24, 2007 (Public Meeting)**: The Board adopts Comprehensive Master Plan. Great Park Design Studio estimate for total cost to build park is **\$979.8 million**.
- G. **January 8, 2008 (Public Meeting)**: City Council elects to proceed with schematic design. Design Studio chief estimator estimates costs to build Great Park at **\$1.24 billion**.
- H. **July 11, 2008 (Not a Public Estimate)**: Corporation consultant Bovis Lend Lease estimates “horizontal park construction” (i.e., no buildings) costs at **\$1.6 billion**. Internal estimates indicate Great Park development with vertical infrastructure will cost **\$3-4 billion**.
- I. **February 19, 2009 (Public Meeting)**: The Board approves Great Park Design Studio’s partial Park Design Submittal. Staff concludes “that the reconciliation is complete and the Project Budget is currently estimated at **\$1,430,000,000**.”

An important theme, and failure of transparency, emerges from this chronology. At two important junctures, the public announcement of the forecasted cost of development of the Great Park was inconsistent with estimates that were privately known to one or more Boardmembers, but not to all. Thus, in January 2006 and January 2007, **public** estimates stated the Great Park development would cost \$400 million or \$401 million, even though **private** estimates put the price tag for construction at \$998 million. The \$998 million estimate was not publicly disclosed until July 2007 – fully 19 months after that figure was privately disclosed and known to the Board Chairman. Then, in February of 2009, a \$1.43 billion estimate was publicly disclosed (and a prior estimate of up to \$1.6 billion was explained), but the fact that total costs **with vertical development** would reach \$3 billion to \$4 billion was not revealed. Because a “Great Metropolitan

Park” necessarily includes buildings, *i.e.*, “vertical development,” a cost estimate that does not include those facilities was, at best, incomplete. At worst, it was misleading.

The current City Council has addressed these shortcomings by shifting to a public/private partnership model where the risks of cost overruns for development of a significant portion of the Great Park are borne by Heritage Fields, not the City. Even though this change insulates the City from the effects of construction cost escalation, the City Council has also been vigilant in requiring analyses of the “costs of ownership” of the Great Park. To that end, the City Council has (1) secured short term funding of \$1.25 million per year between 2016 and 2023 from Heritage Fields for a portion of the initial operations and maintenance costs for 688 acres of the Great Park, (2) secured guaranteed longer term funding in the amount of \$9.5 million per year for maintenance and operation of the entirety of the Great Park, with the ability to expand that annual amount to \$26 million per year when backbone infrastructure construction nears completion, (3) integrated revenue generating uses into the Great Park design (*e.g.*, golf and an athletic complex that will generate significant field rental revenues), and (4) required repeated public discussions of the long term operations and maintenance costs, including discussions of other potential funding sources. These changes are illustrative of the proactive steps taken by the existing City Council to ensure full public transparency with regard to capital and non-capital costs at the Great Park.

***F.6. There were serious questions about the ability of the City to implement the original design based on the City’s available financing and U.S. Navy constraints.***

The City agrees with this finding. The original design process was not tethered to a construction budget. While as originally conceived, this may have been intended to foster creativity, in the end it resulted in a park design process that ran amok. A grand vision for the Great Park was developed without the resources necessary to build to that vision, much less to operate and maintain that grand design.

The effects of this fundamental flaw in the Great Park development process are many-fold, but the most obvious are (1) a gross waste of money on park design, (2) over-empowerment of consultant planners, which lead to failures in supervision, (3) dissemination of highly unrealistic expectations for the design, development, and timing of delivery of the Great Park, and (4) an abject failure to meet those expectations.

The current City Council has taken significant steps, as detailed above, to reconfigure the management structure for the Great Park, to dis-empower the consultant planners, to leverage the resources and expertise of the City’s private partners while maintaining full policy-making authority as to the ultimate design of the Great Park, and most importantly to set and meet realistic expectations for park development.

***F.7. Many of the contracts of the Great Park were open-ended and without defined deliverables, minor oversight, or safeguards. There seemingly was no effective oversight over invoices, contract compliance, or quality control.***

The City agrees with the finding that contracts associated with the Great Park were open-ended with poorly defined deliverables. To say there was no effective oversight, however, fails to acknowledge efforts with impacts identified in the Grand Jury's own report. One such effort was the City's development of the 2009 strategic plan that the Grand Jury Report indicates gave structure and vision for the Great Park's development.

It should also be noted that the City hired independent consultants, such as Bovis Lend Lease and McDevitt Construction Partners to assist with program management and oversight.

In 2013, the City Council streamlined the Board to include only its five sitting City Council members and another major organizational change was implemented to fully integrate the operations of the Great Park within existing City departments, rather than as a separate Department. The project is now under the full authority of the Irvine City Manager, reporting to the Board and City Council. Finally, Irvine voters have enacted Measure V, the Orange County Great Park Fiscal Transparency and Reforms Act, to provide additional oversight and safeguards.

*F.8. There seemed to be over-use of no-bid and sole source contracts without full justification which possibly violates the City's processes and procedures. There are also questions of clarity relative to terms and conditions of current contracts.*

The City agrees that the use of no-bid and sole source contracts should be limited and acknowledges that, in some cases, the justification provided for these contracts should have been more comprehensive. This is why, in 2013, under the leadership of the current City Council, the City revised and expanded its contracting procedures. The revised procedures more fully detail the specific information mandated to be provided within the justification for any no-bid and/or sole source contract.

The City also agrees that the terms and conditions of its agreements with Heritage Fields – the Amended and Restated Development Agreement, the Amended and Restated Master Implementation Agreement, the Agreement with City of Irvine as Adjacent Landowner, and the Second Agreement with City of Irvine as Adjacent Landowner – are complex and complicated. In total, those agreements document the parties' roles and responsibilities with regard to, among other issues: (1) hundreds of millions of dollars in infrastructure phasing, (2) vested rights for private development, (3) payment of regional roadway mitigation fees, (4) payment of millions of dollars in fees to the City for capital facilities, and for long term operations and maintenance, (5) collaboration on the public/private development edges shared by the City and Heritage Fields, (6) coordination with other governmental agencies such as the Army Corps of Engineers, (7) funding and procedures for planning the future phases of the Great Park, (8) recycling of a massive amount of concrete materials from the historic runways on the site, (9) means for addressing unforeseen environmental conditions, (10) conveyance of



additional lands from Heritage Fields to the City, and (11) contracting rules and procedures for work on the first 688 acres of Great Park development. These and other issues in the agreements are complicated matters that give rise to a complex relationship between the City and Heritage Fields.

For all of these reasons, the City agrees with the Grand Jury's recommendation to create a master document to lay out the terms and conditions of each.

***F.9. Orange County Great Park financial statements indicated that less than 50% of expenses incurred were spent on capital, i.e., on the actual design and construction of the Great Park, which is well outside industry standards. The remaining expenses were on salaries, overhead, and contract services.***

The City of Irvine agrees with this finding. The long-held philosophy of the Board and a majority of the City Council was, until early 2013, to "activate the park" concurrent with planning, design and early construction phases. Recognizing the wasteful and unsustainable approach taken from inception of the Great Park project, in January 2013, the new majority membership of the City Council immediately took several actions to reverse the former policy and project management approach.

Specifically, at the first substantive meeting of the new City Council, held on January 8, 2013, Mayor Steven S. Choi, Ph.D. received, by a 3-2 vote, approval of his proposal to (1) change the composition of the Board by eliminating the four at-large members of the Board in preference for a Board that mirrors the directly elected Mayor and City Council; (2) reiterate that Corporation personnel and operations are to be under the general supervision of the City Manager (motivated by the conditions that lead the Orange County Grand Jury to make Finding #4 above); (3) directed the City Manager to move with haste to effectuate these changes; and (4) directed the Corporation CEO to immediately schedule a special meeting of the Board in just two days so that the Board could remove the Board Chairperson and Vice Chairperson and elect their respective replacements (Attachment 1).

In addition to the aforementioned item, on December 31, 2012, I placed an item (Attachment 2) on that same January 8, 2013 City Council meeting agenda asking my colleagues to approve my request that the City Council immediately terminate all existing contracts with Forde & Mollrich and with Townsend Public Affairs, Inc. I observed in my attached December 31, 2012 memorandum that "the financial resources that have been historically allocated to these contracts would serve a substantially greater public benefit if they are instead directed toward construction of additional Orange County Great Park features."

My request was similarly approved by a 3-2 vote of the City Council.

At that same January 8, 2013 meeting, the City Council approved by unanimous vote the item Councilwoman Christina Shea placed on the agenda (Attachment 3) for the

City to solicit proposals from qualified auditing firms to perform the following scope of analysis: (1) provide a comprehensive review of all work efforts, including programming, contracts and contractors (including sub-contractors); (2) determine that all deliverables under the contract terms have been received, (3) ensure all City policies, procedures and fiscal controls were followed, for all contracts and work effort; and (4) create a financial baseline of what has been spent and what actually remains of all revenues.

This scope, and the ensuing work performed by the successful bidder, HSNO, was necessary to address concerns of Councilwoman Shea and others in the community who had expressed a lack of confidence in the return on investment for the millions of dollars that had been spent on consultants for Great Park planning and fledgling park operations since inception.

***F.10.*** *The complexity of financial transactions relative to the Great Park made it difficult to understand the flow of funds relative to sources and uses of monies. The lack of clarity on such basic issues as the number of units authorized to be constructed raises concerns about other issues in the contract that are unclear. This was a major flaw in the reporting system.*

The City of Irvine agrees partially with this finding. The City agrees with the assertions related to the complexity of financial transactions. However, the City disagrees with the portion of the findings that suggests there is a lack of clarity regarding the number of residential units authorized for the private Heritage Fields' property surrounding (but not within) the Great Park.

To add clarity to the financial transactions for the Great Park, under the leadership of the current City Council, the City's Administrative Services department has made several presentations to the Board and the City Council, comprehensively detailing sources and uses of funds. The current City Council has made its expectations clear that the presentation of this information must be clear, concise, transparent, and accurate.

As to the number of authorized development units allocated to Heritage Fields' private property surrounding the Great Park, the initial allocation of residential development intensity to the Heritage Fields development was 3,625 dwelling units and over 6.5 million square feet of non-residential intensity. Those development caps fell squarely within another, separate, development-limiting factor in the City's Zoning Code – namely, the maximum number of average daily trips (ADT). For Planning Area 51, which covers both the Great Park and the private Heritage Fields land, the ADT cap was (and remains) set at 148,910 daily traffic trips. As detailed below, the number of dwelling units permitted in Planning Area 51 for development of Heritage Fields' private property has changed twice through official legislative actions of the City Council.

First, in August 2009, the City Council approved a density bonus agreement with Heritage Fields pursuant to State law. The City had very little discretion in this process –

density bonuses, in exchange for commitments to provide affordable housing, are granted pursuant to a process created by the California Legislature, not the City of Irvine. The density bonus agreement gave Heritage Fields authority to build 1,269 additional homes on its property in exchange for the commitment to construct 544 homes at “very low” and “moderate” home affordability levels. That State-mandated increase in development resulted in a residential cap of 4,894 dwelling units (3,625 + 1,269). The non-residential development limits were unchanged by these actions.

Second, in November 2013, the City Council approved a general plan amendment and zone change to effectively trade (1) a decrease of 410,400 square feet of entitled, unbuilt non-residential intensity for (2) an increase of 3,412 residential dwelling units. This “swap” of non-residential for residential development did not result in a net increase in the number of ADT because forecasted non-residential ADT would decrease while forecasted residential ADT would increase. Concurrently, the City Council approved a second State-mandated density bonus agreement, under which Heritage Fields received the right to build 1,194 additional units in exchange for a commitment to build 512 units at “very low” and “moderate” affordability levels. Combined, the conversion of non-residential to residential intensity (3,412 units) and density bonus per State law (1,194 units) resulted in the addition of 4,606 dwellings. When added to the pre-existing entitlement of 4,894 units, the new total maximum residential development intensity was (and is) 9,500 units.

***F.11. An inordinate amount of funds were spent on public relations and lobbying, “free” public events, exhibitions, food, and a balloon whose benefits did not justify its costs.***

The City of Irvine agrees with this finding. As to the finding that too much funding was directed at public relations and lobbying between 2005 and 2013, the City agrees that City funding of nebulous “public relations” and lobbyist funding was excessive. In the view of the majority of the current City Council, the \$100,000 monthly retainer for the Forde & Mollrich public relations services was beyond the pale, and redundant lobbyist service agreements with the City *and* the Great Park were completely unnecessary and wasteful of public funds.

However, for many years it was the philosophy of a majority of the members of the Board and the City Council that (1) “activation” of the Great Park should occur concurrent with construction of the Great Park rather than to await its final completion and (2) a concerted promotional campaign was a vital component of nascent Great Park operations. As to the former, many free cultural, arts, and recreation programs and events took place in the early years of the Great Park. Following the November 2012 City Council election, the City Council asked the City Manager to identify all of the arts, recreational and leisure programs offered at the Great Park so that we could make informed decisions about whether to continue to support them and, if so, at what public expense. Numerous revisions were made to our inventory of programming following careful consideration at a public meeting.

Whether one agrees with some or all of each of the numerous programs, we do not agree that a “free” public program inherently lacks public benefit. A case in point, summer concerts in the park are a staple of communities across the country every summer. Free summer concerts bring together communities; they can be the source of pride and joy. Similarly, free art exhibits can be the source of pride for artists in the community and can bring joy and inspiration to the visitor. Irvine’s Fine Arts Center, our Great Park Palm Court Arts Complex, our Heritage & Aviation exhibit, and, yes, even the free and/or reduced cost Great Park balloon rides are just some of the affordable or free public amenities of which we—and many of our residents and visitors—so enjoy.

***F.12. The current plan for the construction of the Great Park will require less funding than the original plan but will still require a high cost of construction and operations and maintenance that will be passed on to home buyers.***

The City agrees with this finding. From its inception the plan for the development of the Great Park relied upon a variety of funding sources that would either be directly imposed upon landowners (*i.e.*, home and business owners), or would be imposed upon land developers, then passed on to landowners. As just a few illustrative examples, the original funding sources for the development of the Great Park included: (1) \$200 million in development agreement fees to be paid by Heritage Fields (which Heritage Fields has paid and will ultimately pass on to merchant home builders and landowners); (2) \$201 million from the formation of a Community Facilities District (CFD) that imposes a tax on landowners in the areas surrounding the Great Park (3) redevelopment tax increment, which (until redevelopment dissolution) consisted of a share of the property taxes paid by landowners for the areas surrounding the Great Park; (4) significant homeowners’ association fees that would be collected from homeowners and spent on the operations and maintenance of the Great Park; and (5) a portion of the golf course green fees from the golf courses that were originally contemplated to operate in the property surrounding the Great Park.

Those original funding mechanisms have been changed and augmented over time. As a few illustrative examples:

- A. The homeowners’ association fees were removed when the City and Heritage Fields entered into the Amended and Restated Development Agreement (ARDA), and that reduction in revenue was partially offset by the funding of some additional operations and maintenance through the CFD. The “guaranteed” CFD revenues for operations and maintenance are \$9.5 million per year, and an additional “secondary” operations and maintenance funding source of up to \$16.5 million per year will become available to the City as CFD-funded infrastructure construction nears completion. Although the operations and maintenance burden has been reduced, those costs will continue to be a burden on landowners.
- B. The original \$201 million cap on capital infrastructure funding was removed from the CFD. Now, almost \$400 million in capital infrastructure is anticipated to be



funded through the CFD. To the extent the proceeds from the CFD are not sufficient to pay for the capital infrastructure, those costs will be borne directly by Heritage Fields.

- C. The ARDA also removed the requirement that Heritage Fields construct a golf course and pay a portion of golf green fees to the City, and replaced that obligation with a "public benefit fee" payable to the City over an 8 year period in a total amount of \$9 million. Heritage Fields will presumably pass those fees on to merchant builders which will in turn pass those fees on to landowners.
- D. Redevelopment was dissolved, and with that dissolution approximately \$1.4 billion in forecasted tax increment over time was lost. The City has partially replaced that revenue stream through a settlement with the State of California, which will yield \$292 million for the City, \$277.4 of which can be spent on the Great Park (this effectively replaces the lost tax increment revenue stream for approximately the next 12 years). The \$292 million is funded through property taxes. It should be noted, however, that the \$292 million is not an *increase* in property taxes; rather, it is a diversion of property taxes to the City that would have otherwise been distributed to other taxing entities.
- E. The City obtained a commitment from Heritage Fields to provide over \$40 million more, to be utilized on capital infrastructure and operations and maintenance costs, under the Agreement with City of Irvine as Adjacent Landowner.
- F. The City obtained a commitment from Heritage Fields, under the Second Agreement with City of Irvine as Adjacent Landowner (ALA II), to spend in excess of \$200 million on the development, operations, and maintenance of the Great Park. Of that amount, up to \$40 million will be CFD funded and the remainder will be paid from private Heritage Fields funds.
- G. The City and Heritage Fields entered into a memorandum of understanding under which, Heritage Fields agreed to provide an additional \$10 million to the City by the end of 2018 for funding right of way acquisition for the improvement of Marine Way, one of the critical long term entry ways to the Great Park.

Similar to the original funding sources, it is expected that each of these additional costs will be passed on directly (through a tax) or indirectly (through increased land costs) to landowners.

***F.13.*** *There was no explanation by the City Council as to where the tax increment of \$43 million received by the IRDA from 2005-2011 was utilized.*

The City of Irvine disagrees with this finding. An explanation as to where the tax increment funding was utilized was provided at the January 14, 2014 City Council

meeting (4:43:16 minute mark). The meeting video can be found at the following link:  
<http://irvinequickrecords.com/sirepub/mtgviewer.aspx?meetid=4628&doctype=AGENDA>

**F.14.** *The OCGPC has become a “shell” corporation and serves no intrinsic function as members of the Board of Directors are the same as members of the Irvine City Council.*

Due to the legal complexities involved, the City of Irvine is conducting additional research on this issue to determine whether there is an intrinsic function to the OCGPC. Therefore, until the additional research is concluded, the City at this time partially disagrees with this finding because it is not certain of the correct response. It is going to revisit this issue after further analysis to determine whether and to what extent it agrees or disagrees.

## **RECOMMENDATIONS**

**R.1.** *All of the funds related to Great Park financial activity should be presented as a separate section in the City’s CAFR to allow for greater transparency. (F4) (F9)*

The recommendation will not be implemented, because it is inconsistent with the format required by the Government Accounting Standards Board. However, the objective of the recommendation will be accomplished by presenting the Orange County Great Park Development Capital Project Fund alongside the Orange County Great Park Special Revenue Fund in the basic financial statements of the City’s next published Comprehensive Annual Financial Report (CAFR). This is a change from the format of presenting the Capital Project Fund in a separate section of the document, the supplemental schedules. Additionally in November 2014, Irvine voters ratified Measure V, the Orange County Great Park Fiscal Transparency and Reforms Act, which requires a separate audit report each year of all Great Park funds. This report will be posted annually on the City’s website to provide further consolidated information regarding Great Park financial activities.

**R.2.** *The City of Irvine should give serious consideration to dissolving the Orange County Great Park Corporation as it serves no intrinsic purpose (F13)*

The City of Irvine agrees that this matter deserves serious consideration. Therefore, consistent with the recommendation, the City Attorney’s Office has been directed to conduct further research on potential pros and cons of dissolving the Orange County Great Park Corporation and to present this information to the City Council for further discussion and direction at an upcoming City Council meeting within six months from the date of publication of the Grand Jury report.

**R.3.** *The City of Irvine should create and consider adopting an ordinance similar to that adopted in other cities, such as Mission Viejo, that limits the interference and influence of City Council members with the operational aspects of the city (F1) (F2) (F4)*

The recommendation has been implemented. Existing Irvine Municipal Code Section 1-3-109, entitled "Council-Manager relations," adopted in 1976, prescribes the manner in which the city manager is to "take his or her orders" from the City Council and its members. The City Council will be mindful of the importance of complying with this pre-existing law in the future.

***R.4. The City of Irvine should develop and publish a new 10-year comprehensive strategic plan for all of the development activities beyond that ALA II plan with time commitments for the Cultural Terrace, including the library, lake, museums, etc. along with all of the funding and expenditure plans (F2) (F7) (F11)***

This recommendation has not yet been implemented, but will be implemented by February 2017. The current City Council has emphasized the importance of comprehensive, realistic, and accurate long term planning for the development, operation, and maintenance of the Great Park. To that end, the ALA II provides \$2 million in funding by Heritage Fields for the creation of feasibility studies for the development of the next major phase of the Great Park– the Cultural Terrace. The Board and the City Council anticipate that, as those studies are refined, a robust public discussion of the costs, benefits, and options revealed in those studies will take a significant amount of additional time. In total, it is reasonable to expect that the process will be completed by early 2017.

***R.5. The City of Irvine should discontinue extravagant expenditures in favor of more cost conscious public events. As an example, the City should consider "grounding" the balloon or severely limiting its use, as this expensive attraction costs over \$1 million per year to operate (F10)***

The recommendation has been implemented. In early 2013, in response to related Board and City Council inquiries, the City Manager commissioned a comprehensive assessment of all Great Park programming. Upon public consideration of the respective 64 annual Great Park programs and events the City Council made fee increases and program reductions aimed at increasing cost recovery of select programs and elimination of others to increase fiscally sustainable park operations in the near and the long term. Included among the attractions for which fees were implemented were those for adult ridership of the balloon.

The events now held at the Great Park are operated by the Irvine Community Services Department under the general supervision of the City Manager, in accordance with City practices and policies, Board advisement, and City Council approval. This is the same operational model that has led the Irvine Community Services program to have the respect and confidence of Irvine residents and other patrons of the City's parks and recreation programs and facilities.

Ultimately, however, the ideal operating model for the future of the Great Park will be the subject of the ongoing review of the Irvine Community Services Commission, Board

and City Council to ensure the park is operated effectively and efficiently to meet the City's customary high standard while protecting Irvine taxpayers from operating costs of this significant regional park facility.

***R.6. The City should review and ensure compliance with its policies and guidelines regarding contracts and appropriately restricting the use of sole source and no-bid contracts (F7)***

This recommendation has been implemented. The City's sole source procedures were strengthened in 2009. The City has also since enhanced its sole source instructions and forms and has provided additional staff training regarding these contracts. Furthermore, Irvine voters ratified Measure V in 2014, the Orange County Great Park Fiscal Transparency and Reforms Act, to provide additional safeguards and transparency.

The Great Park audit was initiated by the City Council to evaluate historical compliance with its policies and guidelines. Ongoing compliance of contracts is monitored by the City's Administrative Services Department.

***R.7. The City of Irvine should create a master document that lays out all of the terms and conditions of the ALA, ARDA, ALA II contracts and alterations to the Master Plan and Land Use Agreements. These need to be consolidated into one document of record which clearly indicates each party's obligations under the contract. (F7)***

This recommendation will be implemented no later than January 1, 2016. The City agrees that the generation of a "master document" detailing the City's various rights, responsibilities, and obligations is an important and valuable document. Creation of that document is a multi-disciplinary exercise, requiring input from the City's Community Development Department (for land use matters), City Manager's Office (for park development and master plan issues), and City Attorney's office (for legal matters).

Given the complexity of the agreements, and the sensitivity of all parties with regard to matters of interpretation, this process can reasonably be completed by early 2016.

***R.8. The City of Irvine needs to provide an explanation as to where the tax increment of \$43 million received by the IRDA from 2005-2011 was utilized (F13)***

The recommendation has been implemented. Staff provided a verbal explanation of the utilization of this funding at the 4:43:16 minute mark of the January 14, 2014 City Council meeting. The meeting video can be found at the following link:  
<http://irvinequickrecords.com/sirepub/mtgviewer.aspx?meetid=4628&doctype=AGENDA>


We regret that an erroneous conclusion was previously reported causing doubt as to the proper handling and accounting of these resources. In fact, all funds were collected and accounted for consistent with generally accepted accounting principles.



The Irvine City Council thanks the Orange County Grand Jury for the attention it has given to governance and past actions concerning the Great Park. We also appreciate the opportunity to address the Grand Jury's findings and recommendations. Doing so allows us to explain the many actions that we have taken since January 2013 to address the concerns with which we agree while setting a new course for intelligent design and development of the Great Park. We are confident that the new and transparent direction we are taking will result in a unique metropolitan park that will provide pleasure to our community and, yes, our region, for decades to come.

Please contact City Manager Sean Joyce at (949) 724-6249 if you have questions or if we can provide additional information.

Sincerely,



Jeffrey Lalloway  
Mayor Pro Tem

cc: Irvine City Council  
Peter Hersh, Foreperson  
2015-16 Orange County Grand Jury  
700 Civic Center Drive West  
Santa Ana, CA 92701

Attachments:

1. Mayor Choi Memorandum Dated December 31, 2012
2. Mayor Pro Tem Lalloway Memorandum Dated December 31, 2012
3. Councilwoman Shea Memorandum Dated December 31, 2012


RECEIVED

DEC 31 2012

CITY OF IRVINE  
CITY MANAGER'S OFFICE

# Memo

To: City Council

From: Steven Choi, Mayor 

Date: December 31, 2012

Re: Proposed Amendment of Orange County Great Park Corporation Articles of Incorporation

---

The State Legislature's 2011 elimination of California redevelopment agencies has had a significant financial impact on our ability to use anticipated redevelopment agency tax increment to finance major Orange County Great Park amenities. It is particularly dismaying that the Governor and Legislature's imprudent decision to eliminate redevelopment that left no exception for military base re-use projects, particularly those, like ours, that would create thousands of jobs and provide incalculable regional public benefit.

The loss of redevelopment tax increment has effectively resulted in the loss of approximately \$1.4 billion to the Orange County Great Park, which Irvine had expected to be able to leverage by way of tax increment financing to realize the construction of the park in the near-term. It is now abundantly apparent that this dramatic turn of events has impacted our ambitious aspirations for the near-term completion of the Great Park. Nonetheless, I remain confident that our aspirations for the realization of the greatest metropolitan park of this century remain decidedly within our reach—we will simply need to re-imagine the means by which we realize achievement to which we have all devoted our efforts since 2005, indeed since efforts to pass countywide legislation, known as Measure W, commenced more than a decade ago.

Substantial time and resources have been dedicated to Great Park planning since the Corporation Board of Directors commenced its efforts in 2003. The decision was made early on that the formal planning efforts and decision-making associated with the Orange County Great Park would benefit from the inclusion of persons reflecting interests and representing areas outside of Irvine. Thus, four "at-large" members were included among the Board of Directors in addition to the five members of the Irvine City Council.

Mindful of the thorough planning that has already occurred—and that the nine-member Board of Directors has facilitated—while simultaneously mindful that the loss of redevelopment tax increment leaves us with finite resources to continue to add to the inventory of physical amenities at the Great Park, I believe it is timely to give consideration to streamlining the governance of the Orange County Great Park Corporation so that we can

ATTACHMENT 1 TO RESPONSE LETTER

focus as much attention as possible to operations and, where feasible, future development of the physical park features in the near-term.

Specifically, I present for your consideration and action on January 8, 2013 a proposal to amend Article IV of the Articles of Incorporation of the Orange County Great Park Corporation that, if adopted, would amend the composition of the Orange County Great Park Corporation's Board of Directors to consist solely of the Irvine City Council.

Article VIII of the Articles of Incorporation establishes the authority of a majority of the City Council to adopt amendments. My proposed change would result in a five-member Board of Directors comprised of individuals that have been elected to their post by Irvine's electorate and, importantly, is accountable to that same electorate for the decisions we make. Such is not the case in the instance of the four at-large members. I firmly believe that we need a Board whose membership is directly and entirely accountable to those we serve.

Existing policy resolutions of the City Council and the action of the City's voters in November of 2008 clarify that the Orange County Great Park is an operating department of the City of Irvine under the general direction of the city manager. Similarly, the City's response to the Orange County Grand Jury in 2006 emphasizes that pursuant to the applicable federal tax regulations under which the Great Park Corporation was formed, the Great Park Corporation serves as a subsidiary of the City, and that the City retains ultimate authority and control over the functions of the Great Park Corporation. It is my hope that my proposed change, which simply recognizes the existing operational model, will allow us to plan, construct and operate the many features that will comprise the Great Park in a more streamlined manner, which will benefit the residents of Orange County for decades to come. I expect that the CEO, reporting to the city manager, can seamlessly provide executive leadership in a fashion to which we have become accustomed.

I understand that the time and place of regular board meetings is at the discretion of the Board. I further propose that the cablecast monthly meetings of the Orange County Great Park Board be scheduled to occur prior to the regularly scheduled meetings of the City Council for the convenience of those accustomed to these meeting times and days. This latter suggestion mirrors the model we successfully employed for several years with the Irvine Redevelopment Agency. This change will allow the Board of Directors to focus our collective attention on the business of providing policy direction concerning construction of the Orange County Great Park for an hour or more during each of our meetings. I suggest that regular meetings of the Orange County Great Park Board of Directors be held on the fourth Tuesday of each month at 3:00 p.m. This will allow for the City Council to convene closed sessions, as may be necessary, immediately prior to the scheduled City Council meeting.

I am confident that the resulting efficiencies achieved by these two changes will allow the Board of Directors to make the best use of our time and that the new composition of the Board of Directors will add a greater element of direct public accountability than presently exists.

I am deeply appreciative of the time and attention devoted by each of the at-large members of the Board of Directors over these past 9 years. Each has spent countless hours dedicating

their time and efforts to this unique and grand undertaking—one that I continue to believe will benefit greater Orange County for many generations to come.

I recommend that the City Council approve the attached Certificate of Amendment of the Articles of Incorporation. In the event this action is taken, I further recommend that staff be directed to prepare and return to us with the materials and documentation (for example, resolutions, bylaw amendments, etc.) necessary for the City Council, whether sitting as the City Council or as the Corporation Board of Directors, to reflect and effectuate the changes referenced in this Memo and those that may be otherwise be added by support of a majority of the City Council during our discussion concerning this item.

If a majority of the City Council approves my above-described proposals, then pursuant to Section 5(d) of Article VII of the Corporation's Bylaws, I further recommend that the City Manager be asked to direct the Orange County Great Park Corporation's President (CEO Mike Ellzey) to immediately schedule a special meeting of the Great Park Board of Directors at 10:00 a.m. on January 10, 2013 in the City Council Chambers for the purposes of 1) removing the Chair and Vice Chair of the Board and electing a new Chair and Vice Chair, and 2) adjusting meeting times and days for all future regular meetings of the Orange County Great Park Board of Directors. If the latter proposal is approved, the next regular meeting of the Board of Directors would be held at 3:00 p.m. on January 22, 2013.

I understand that the Board will be limited to considering just these two items in accordance with the provisions of the Brown Act applicable to special meetings.

#### **Recommendation**

I recommend that the City Council approve my proposal as follows:

- 1) Adopt the attached Certificate of Amendment of Articles of Incorporation establishing the composition of the Orange County Great Park Board of Directors to be five directors, who shall be the persons serving as the duly elected or appointed members of the Irvine City Council; and
- 2) Reiterate that the personnel of the Orange County Great Park Corporation are employees of the City and, consistent with previously adopted City Council resolutions and a voter-approved initiative ("Measure R," effective 2008-2012), shall operate under the general supervision of the City Manager; and
- 3) Direct the City Manager and City Attorney to prepare documents effectuating a change of meeting times and days of regularly scheduled meetings of the Orange County Great Park Board, in accordance with that which I have suggested above, for the Board of Directors' approval at the earliest possible date.
- 4) Ask the City Manager to direct Orange County Great Park Corporation President/CEO Ellzey to immediately schedule a special meeting of the Great Park Board of Directors at 10:00 a.m. on January 10, 2103 in the City Council Chambers for the purposes of 1) removing the Chair and Vice Chair of the Board and electing a new Chair and Vice Chair, and 2) adjusting meeting times and days for all future regular meetings of the Orange County Great Park Board of Directors.

Attachment: Proposed Certificate of Amendment of Articles of Incorporation



CERTIFICATE OF AMENDMENT OF  
ARTICLES OF INCORPORATION

This is to certify the following:

1. The undersigned constitute a majority of the City-Directors of the ORANGE COUNTY GREAT PARK CORPORATION in office as of the date of this Certificate of Amendment of Article of Incorporation.

2. Article IV of the Articles of Incorporation of this corporation is amended to read in its entirety as follows:

“This corporation’s Board of Directors shall have five (5) directors, who shall be the persons serving as the duly elected or appointed members of the City Council of the City of Irvine (hereafter referred to as “City-Directors”).”

3. As required by the Articles of Incorporation, the foregoing amendment has been duly approved by a majority of the City-Directors of this corporation. The names and signatures of the City-Directors approving the foregoing amendment appear below.

4. This corporation has no members.

5. The Bylaws of this corporation shall hereafter be promptly amended in conformity with the foregoing amendment of the Articles of Incorporation.

We declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate of Amendment of Article of Incorporation are true and correct to our own knowledge.

Dated: January \_\_\_\_, 2013

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Memo

RECEIVED

DEC 31 2012

CITY OF IRVINE  
CITY MANAGER'S OFFICE

To: Sean Joyce, City Manager

From: Jeffrey Lalloway, Mayor Pro Tem

Date: December 31, 2012 JZ

Re: Proposed Termination of Agreements for Consulting Services with Forde & Mollrich and Townsend Public Affairs, Inc.

---

Please place an item on the January 8, 2013 City Council agenda to consider taking action to immediately terminate the contracts for consulting services with Forde & Mollrich and with Townsend Public Affairs, Inc. I believe that the financial resources that have been historically allocated to these contracts would serve a substantially greater public benefit if they are instead directed toward construction of additional Orange County Great Park features.

The terms of our agreement with Forde & Mollrich calls for consulting services to be rendered as described within a scope of services that, in part (Attachment 1, see Part IV, pp. 15-16 for a complete description) includes advertising and marketing services, Great Park board presentations, CEO reports, social media strategy, collateral material production, media relations, photo and video library services, counsel and support associated with fundraising materials and support, and marketing support associated with the 2013 Solar Decathlon. For these services, Forde & Mollrich is to be compensated at a rate of \$50,000/mo. or \$600,000/yr. for the current fiscal year.

Additionally, the aforementioned scope of services contemplates that we would call upon Forde & Mollrich for "miscellaneous services" such as graphic design and production, website support, and community stakeholder relations (i.e. park tours and public presentations) at a rate of \$300,000/yr. Thus the total annual compensation set for Forde & Mollrich is up to \$900,000. This funding comes entirely from the diminishing resources of the Orange County Great Park. As stated above, I firmly believe this \$900,000 per year can be put to better use.

In the case of Townsend Public Affairs, Inc. (TPA) the City is engaged in two distinct agreements with TPA. One agreement is for general state lobbying services (Attachment 2) at a rate of \$74,000/yr. The second contract (Attachment 3) has TPA providing funding and legislative advocacy to the Orange County Great Park at a rate not to exceed \$127,000/yr. I am confident that by consolidating the services and seeking competitive bids for many of these same services we can realize a savings that can, again, increase the resources we can

ATTACHMENT 2 TO RESPONSE LETTER

devote to expanding and expediting the next phases of Orange County Great Park construction.

While I see the value that a state lobbyist can provide the City, I question the need for two separate contracts with Townsend Public Affairs totaling \$201,000, each of which compensates the firm for providing advocacy services to the same agency—the City of Irvine.

I recommend that the City Council immediately terminate all existing contracts with Forde & Mollrich and with Townsend Public Affairs, Inc. in accordance with the termination clauses included in the respective agreements.

Attachments: 1. Contract Number 7469; Forde & Mollrich  
2. Contract Number 6999A; Townsend Public Affairs, Inc.  
3. Contract Number 6221C; Townsend Public Affairs, Inc.

cc: Irvine City Council  
Sharie Apodaca, City Clerk  
Phil Kohn, City Attorney

# CONTRACTS SCAN SHEET

CONTRACT NUMBER: 7469

CONTRACT TYPE: SERVICES

DEPARTMENT: ORANGE COUNTY GREAT PARK  
Department initiating contract

CONTRACT DATE: 09/07/2012  
As stated in Terms section of Contract

EXPIRATION DATE: 06/30/2013  
As stated in Terms section of Contract

MEETING DATE:  
Date of meeting where contract was approved

ITEM NUMBER:  
Item number of meeting where contract was approved

CONTRACT AMOUNT: NOT TO EXCEED \$900,000  
As stated in Budget section of Contract

CONTRACT NAME: FORDE & MOLLRICH  
As stated in 1<sup>st</sup> paragraph of contract

CONTRACT SUBJECT: MARKETING AND  
As stated in Description of Services section of contract COMMUNICATIONS SUPPORT  
SERVICES



ORIGINAL

AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of September 7, 2012, by and between the CITY OF IRVINE, a municipal corporation ("City"), and FORDE & MOLLRICH, a California corporation ("Contractor"). (The term Contractor includes professionals performing in a consulting capacity.)

PART I

FUNDAMENTAL TERMS

A. Location of Project: The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.

B. Description of Services/Goods to be Provided: Marketing and communications support services in accordance with PART IV, Scope of Services, included herein.

C. Term: Unless terminated earlier as set forth in this Agreement, the services shall commence on July 1, 2012 ("Commencement Date") and shall continue through June 30, 2013. The City reserves the right to extend this Agreement for up to four (4) additional one (1) year periods. Such extension shall only be valid if effectuated in writing by the City.

D. Party Representatives:

D.1. The City designates the following person/officer to act on City's behalf: Tim Shaw, Manager of External Affairs, email: tshaw@ocgp.org

D.2. The Contractor designates the following person to act on Contractor's behalf: Stu Mollich, email: stu@formol.com

E. Notices: Contractor shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Contractor at the address set forth following Contractor's signature below.

F. Attachments: This Agreement incorporates by reference the following Attachments to this Agreement:

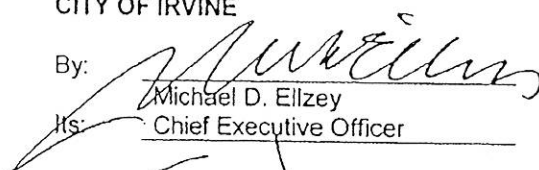
- F.1. Part I: Fundamental Terms
- F.2. Part II: General Provisions
- F.3. Part III: Special Provisions
- F.4. Part IV: Scope of Services
- F.5. Part V: Budget

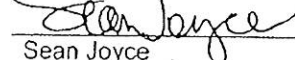
G. Integration: This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

7469

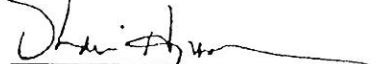
IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

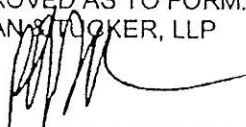
By:   
Michael D. Ellzey  
Its: Chief Executive Officer

By:   
Sean Joyce  
Its: City Manager

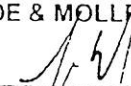
Attest:

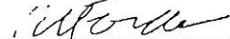
By:   
Sharie Apodaca  
City Clerk of the City Of Irvine

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

  
Philip D. Kohn

FORDE & MOLLRICH

By:   
Its: VICE PRESIDENT

By:   
Its: PRESIDENT

**Contractor Information**

**Address for Notices and Payments:**

4041 MacArthur Boulevard, Suite 190  
Newport Beach, CA 92660

Attn: Stu Mollrich  
Telephone: (949) 476-9064  
FAX: (949) 851-9053  
Email: [stu@formol.com](mailto:stu@formol.com)

PART II  
GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. City approval and/or payment for work claimed by Contractor as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Contractor without additional consideration due. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.3 Standard of Performance. Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of City. Notwithstanding any other provision herein, Contractor agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from City. In the performance of this Agreement, Contractor shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

1.6 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the

facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the City's Representative.

**1.7 Identity of Persons Performing Work.**

(A) Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Contractor shall not replace any of the principal members of the Project team, or any successors to any of such persons, without City's prior written approval.

(B) Contractor represents that the tasks and services required hereunder will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, Contractor shall not employ any undocumented aliens (that is, persons who are not citizens or nationals of the United States).

(C) This Agreement contemplates the personal services of Contractor and Contractor's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor and Contractor's employees. Neither this Agreement nor any interest therein may be assigned by Contractor, except upon written consent of City.

**1.8 Prohibition Against Subcontracting or Assignment.** Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express written consent of City.

**SECTION TWO: INSURANCE AND INDEMNIFICATION**

**2.1 Insurance.** Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the contractor is required to maintain pursuant to this Section 2.1.

**2.1.1 Insurance Coverage Required.** The policies and amounts of insurance required hereunder shall be as follows:



A. **Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the Insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

***A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.***

B. **Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

***A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.***

C. **Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this agreement. Such insurance shall be endorsed to:

(1) Waive the insurer's right of Subrogation against the City and City Personnel.

***A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.***

Contractor's completion of the form attached hereto as Exhibit 1 shall be a condition precedent to Contractor's rights under this Agreement.

D. **Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

E. **Evidence of Insurance:** Contractor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

Original, signed insurance certificates and endorsements must be sent via email from Contractor's insurance broker/agent to the City's insurance certificate tracking company at CertsOnly@periculum.com

The City project title or description MUST be included in the "Description of Operations" box on the certificate.

**Certificate Holder:**

City of Irvine, California

c/o: CertsOnly@periculum.com

F. **Endorsements:** A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Contractor
4. Contain any other exclusion contrary to the Agreement.

G. **Any Deductible in Excess of \$50,000 and/or Self-Insured Retentions** must be approved in writing by the City.

H. **Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best's rating of A VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

I. **Insurance of Subcontractors.** Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this

Agreement, including naming the City as an additional insured to the Subcontractor's policies.

**2.2 Indemnification.** Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

**2.2.1** Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

**2.2.2** Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

**2.2.3** In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

### **SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES**

**3.1 Compliance with Laws.** Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

**3.2 Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

**3.3 Covenant Against Discrimination.** Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status,

national origin, or ancestry, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

**3.4 Independent Contractor.** Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Contractor nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

**3.5 Covenant Against Contingent Fees.** Contractor warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

**3.6 Use of Patented Materials.** Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

**3.7 Proprietary Information.** All proprietary information developed specifically for City by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to City, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

**3.8 Retention of Funds.** Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct,



in performing or failing to perform Contractor's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay City any sums Contractor owes City.

**3.9 Termination By City.** City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from City, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement contractor and similar expenses, exceeds the Budget.

**3.10 Right to Stop Work; Termination By Contractor.** Contractor shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Contractor shall provide City thirty (30) day prior written notice of such claimed payment owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Contractor shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.9 relating to City's right to take over and finish the work and Contractor's liability, the thirty (30) day notice shall apply.

**3.11 Waiver.** No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing.

**3.12 Legal Actions.** Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Municipal and Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

**3.13 Rights and Remedies are Cumulative.** Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

**3.14 Attorneys' Fees.** In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its

reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

**3.15 Force Majeure.** The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.13.

**3.16 Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

**3.17 Conflicts of Interest.**

A. No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any Federal, State or City statute, ordinance or regulation. Contractor shall not employ any such person while this Agreement is in effect.

B. Contractor represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

C. Contractor represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Contractor shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Contractor as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Contractor shall not possess or maintain any business relationship with the applicant or any other person or entity which Contractor knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Contractor shall not advocate either

for or against said project and/or application, and (iii) Contractor shall immediately notify City in the event Contractor determines that Contractor has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Contractor's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

D. Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Contractor to be a "Consultant" as that term is defined by the Act. In the event City makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Contractor further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

**3.18 Contractor Ethics.** Contractor represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Contractor shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Contractor as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Contractor shall not possess or maintain any business relationship with the applicant or any other person or entity which Contractor knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Contractor shall not advocate either for or against said project and/or application, and (iii) Contractor shall immediately notify City in the event Contractor determines that Contractor has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Contractor's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

**3.19 Compliance with California Unemployment Insurance Code Section 1088.8.** If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

#### SECTION FOUR: MISCELLANEOUS PROVISIONS

**4.1 Records and Reports.** The City Manager or his/her designee of the City of Irvine reserves the right to audit the Contractor's compliance with all of the terms and conditions of this Agreement at any time. Upon request by City, Contractor shall prepare and submit to City any reports concerning Contractor's performance of the services rendered under this Agreement. City shall have access, with 72 hours advance written notice delivered to Contractor, to the books and

records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of City. Contractor shall keep and maintain all records and reports related to this Agreement for a period of three (3) years following termination of this Agreement, and City shall have access to such records in the event any audit is required.

**4.2 Notices.** Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To City: City of Irvine  
One Civic Center Plaza (92606) (Hand Deliveries)  
P. O. Box 19575  
Irvine, CA 92623-9575

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I. of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

**4.3 Construction and Amendment.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

**4.4 Severability.** Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

**4.5 Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**4.6 Special Provisions.** Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget"), Part III shall take precedence and prevail over Parts I, II, IV and V; Part II shall take precedence and prevail over Parts I, IV and V; Part IV shall take precedence and prevail over Parts I and V; and Part V shall take precedence over Part I.



PART III  
SPECIAL PROVISIONS

- 1) **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.
  
- 2) **Living Wage Ordinance.** The City of Irvine has adopted a Living Wage Ordinance (the "Ordinance") that requires contractors who enter into a contract with the City to provide services with an estimated value of one hundred thousand dollars (\$100,000) or more for any consecutive twelve-month period to comply with the requirements of the Ordinance (reference Appendix A). Contractor shall notify the City in writing if the aggregate value of multiple contracts with the City, including amendments to this Agreement, total \$100,000 or more. Any subcontractor(s) performing work on the Agreement shall also be subject to the requirements of the Ordinance. The current living wage and benefit factor rates are posted on the City's website at [www.cityofirvine.org/purchasing](http://www.cityofirvine.org/purchasing). To view the rates, along with other living wage information, click on the "Living Wage Information" link.

**Contractors are required to submit a completed Declaration of Compliance - Living Wage Ordinance form (included herein as Appendix B) with their completed contract documents.**

The following Living Wage Ordinance information documents are also included: Living Wage Guide (Appendix C); Living Wage Comparable Benefits Summary (Appendix D); and the required Notice to Employees (Contractor Responsibility/Employee Rights) (Appendix E).

PART IV  
SCOPE OF SERVICES

Marketing and communications support services shall be performed as follows:

- I. Primary Services:
  - A. Advertising and Marketing Services
    1. Provide counsel and support creation of the Orange County Great Park (OCGP) branding and marketing plan
    2. Develop advertising and marketing plans and materials in support of OCGP events, programs and initiatives
    3. Coordinate development of creative content for ads
    4. Develop paid advertisement schedules and buys for print, online, mobile and social ads as appropriate
  - B. Board Presentations and CEO Reports
    1. Produce presentations for OCGP Board meetings as directed
    2. Produce weekly CEO Report newsletter as directed
  - C. Social Media Strategy, Content Development, Community Management and Measurement
    1. Provide counsel on social media strategy and measurement
    2. Support social media content development and community management
    3. Create tracking reports on social media analytics
  - D. Collateral Material Production
    1. Coordinate design, content and production of collateral materials in support of OCGP events and programs, including brochures, presentations, videos, annual report, park signage, rack cards, and other materials as needed
  - E. Media Relations
    1. Develop earned media plans in support of OCGP events, programs and initiatives as needed
    2. Draft media materials for OCGP events and programs as needed
    3. Manage distribution of media releases
    4. Conduct follow-up on media release distribution
    5. Coordinate media interviews as appropriate or needed
    6. Provide on-site media relations support for OCGP events as needed
    7. Coordinate media monitoring and clip tracking reports

- F. Photo and Video Library
    - 1. Maintain and update OCGP photo and video library
    - 2. Coordinate photography and video services as needed for OCGP events and programs
  - G. Fundraising Materials and Support
    - 1. Provide counsel and support for OCGP fundraising, membership and sponsorship programs, not including the Solar Decathlon and XPO
    - 2. Develop presentations and collateral print materials needed to implement fundraising, membership and partnership programs
  - H. Solar Decathlon/XPO Marketing
    - 1. Provide marketing, publicity and communications support for Phase 1 planning and promotion of the 2013 Solar Decathlon and XPO for the period ending August 31, 2012
- II. Miscellaneous Services, which may be subcontracted:
- A. All graphic design and production art
  - B. All website support including maintaining, updating and developing new pages and content, completing development of new website and content and coordinating and providing monitoring and reports on website analytics
  - C. All community and stakeholder relations activities including park tours and presentations to community organizations and individuals

## PART V

### BUDGET

Pricing shall be as set forth below.

Included in the Budget are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement.

City shall compensate Contractor a fixed fee in the amount of Fifty Thousand Dollars (\$50,000) per month for the Scope of Services set forth in PART IV, Section I - Primary Services. Total annual compensation for Primary Services shall not exceed \$600,000.

City shall compensate Contractor on an hourly basis at the rate of \$125.00 per hour for the Scope of Services set forth in PART IV, Section II - Miscellaneous Services.

Reimbursable expenses shall be paid on a cost plus a project management fee not to exceed 15%. Allowable reimbursable expenses include but are not limited to printing, advertising, photography, and delivery services.

Total combined annual compensation for Miscellaneous Services and reimbursable expenses shall not exceed \$300,000.

Total annual contract not to exceed \$900,000.

Payment for services will be made monthly on invoices deemed satisfactory to the City, with payment terms of net 30 days upon receipt of invoice. Contractor shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Contractor shall provide invoices with sufficient detail to ensure compliance to pricing as set forth in this Agreement. The information required may include: date(s) of work, hours of work, hourly rate(s), and material costs.

No work shall be performed in connection with this Agreement until the receipt of a signed City of Irvine Purchase Order. The Purchase Order number must be included on all invoices, along with the City Representative's name. Failure to include this information on the invoice shall result in the return of the unpaid invoice.

Contractors should submit invoices electronically to:

[invoicesubmittal@cityofirvine.org](mailto:invoicesubmittal@cityofirvine.org)

Payment by City under this Agreement shall not be deemed as a waiver of the City's right to claim at a later point that such payment was not due under the terms of this Agreement.

Pricing shall remain firm for the entire one (1) year Agreement term. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to the City Representative in writing at least ninety (90) days prior to the new Agreement term. City reserves the right to negotiate any pricing adjustment not to exceed the Bureau of Labor Statistics Consumer Price Index (CPI) data as follows: Los Angeles-Riverside-Orange County, CA; All Items; Not

Seasonally Adjusted; annualized change comparing the most recent month's reported data to the same month of the prior year. (This information may be found on the U.S. Department of Labor's website at [www.bls.gov](http://www.bls.gov).)

Contractors submitting expense reimbursement requests to the City shall include on their invoices detailed information including description, date of the expense, business purpose and amount. Contractor shall attach supporting documents substantiating the expense such as itemized receipts, paid invoices or paid credit card statements (if description has sufficient detail). Any request for travel-related expense reimbursement must be pre-approved by the City.



Exhibit 1

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Contract Services Description: Communications and marketing support

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this Agreement.

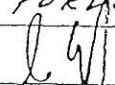
I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this Agreement. My workers' compensation insurance carrier and policy number are:

Carrier FARMERS INSURANCE

Policy Number NO 1083442-12

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated:	9/17/2012
Contracting Firm:	FORDE AND MOLLICH
Signature:	
Title:	Vice President
Address:	4041 MacArthur #190 Newport Beach, CA 92660

# Appendix A

## CITY COUNCIL ORDINANCE NO. 07-15

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 6 TO TITLE 2 OF THE IRVINE MUNICIPAL CODE RELATING TO LIVING WAGE REQUIREMENTS

The City Council of the City of Irvine DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Division 6, entitled "Living Wage Requirements," is hereby added to Title 2 ("Administrative Services") of the Irvine Municipal Code to read in its entirety as follows:

#### Division 6. Living Wage Requirements

##### Section 2-6-101. Title and Purpose.

A. This division shall be known and may be cited as the "City of Irvine Living Wage Ordinance."

B. The purpose of this division is to improve the quality of services to beneficiaries of City-contracted services and to ensure that employees of City service contractors earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public. Such public expenditures should in accordance with a community economic standard that permits workers to live above the poverty level.

C. This division is intended to protect the public health, safety and welfare. It advances this intent by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors.

##### Section 2-6-102. Findings.

A. As a charter city, the City has the power to set compensation and terms of employment for its employees as an exercise of its municipal powers.

B. The City awards contracts to private firms and other businesses to provide services to the public and to City government.

C. The use of City funds to create living wage jobs will decrease poverty, increase consumer income, invigorate community businesses and

reduce the need for taxpayer-funded social service programs.

D. When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources.

E. The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments.

F. Employees are more likely to be healthy if their employers provide reasonable health insurance to them and their dependents.

G. The payment of a living wage as required by this division benefits the above-stated interests.

Section 2-6-103. Definitions.

For purposes of this division, the following definitions shall be applicable:

(a) "Benefit factor rate" means the rate established by the City to be the estimated cost of health benefits paid to a covered employee. If the Contractor does not provide comparable benefits equal to or exceeding this rate to the covered employee, the benefit factor rate must be added to the living wage rate to arrive at the total hourly rate that must be paid to the covered employee.

(b) "City" means the City of Irvine and all City agencies, departments and offices, including but not limited to the Irvine Redevelopment Agency and the Orange County Great Park Corporation.

(c) "Contractor" means any person or business that enters into a new service contract or any service contract with the City that is amended, renewed or extended after the effective date of this division except for those bids, RFP's and contracts that were in process at the time this division becomes effective. For the purposes of this division, the term "Contractor" shall include all subcontractors retained by a Contractor to perform any or all of the functions covered by the contract.

(d) "Covered employee" means (1) any employee whose services fulfill the Contractor's contractual obligations for contracts with the City that are subject to this division and (2) any other employee of the Contractor who performs a majority of his or her services within Orange County. Additionally, bona fide volunteers shall not be considered

"covered employees."

(e) "Health benefits" means medical and dental benefits offered by the Contractor to its employees in which the employer pays at least the current benefit factor rate on behalf of its covered employees.

Section 2-6-104. Application of this Division.

Every Contractor that enters into a contract with the City to provide services with an estimated value of one hundred thousand dollars (\$100,000) or more for any consecutive twelve-month period shall comply with the requirements of this division. As a condition of the contract, the Contractor shall notify the City in writing if the aggregate value of multiple contracts with the City is \$100,000 or more.

Section 2-6-105. Duties of the Purchasing Agent.

The Purchasing Agent shall be responsible for ensuring that the requirements of this division are incorporated in all contracts, bid documents, requests for proposals (RFP's) and requests for qualifications (RFQ's) that may be subject to this division to ensure proper implementation of all requirements. In addition, the Purchasing Agent shall be responsible for developing and implementing rules and regulations for the effective administration of all requirements set forth in this division.

Section 2-6-106. Compensation Required to be Paid to Contractor's Employees.

A. All Contractors subject to the requirements of this division shall pay its covered employees an hourly rate and comparable health benefits and paid time off (such as vacation, sick, holiday and jury duty) as set by the most current City Council Resolution establishing compensation policy for employees. The hourly rate shall be the minimum hourly rate of all salary classifications. An additional rate, defined as the benefit factor rate, shall be added to the hourly rate if comparable health benefits are not offered by the Contractor to the covered employee.

B. Beginning July 1, 2007, the City shall provide notice to all covered Contractors by posting current living wage and benefit factor rates on the City's web site in the Bids & RFP's Purchasing section. In general, rates are subject to change each July; however, Contractors are responsible for monitoring and updating payroll records to accommodate rate changes where applicable. In addition, Contractors are responsible for notifying and ensuring compliance with these requirements by

subcontractors retained by Contractor to perform any or all of the functions covered by the contract.

C. A Declaration of Compliance must be signed by an authorized agent of the Contractor and will serve as part of the terms of the contract and/or amendments.

D. In the event that collective bargaining agreements and/or prevailing wage requirements are higher than the current living wage rates as set forth in this division, collective bargaining and/or prevailing wage rates must be paid to covered employees.

Section 2-6-107. Exceptions.

A. The City Council, by majority vote, may grant a whole or partial exception to the requirements of this division to a Contractor at the time of award of the contract if the City Council determines that imposition of the requirements of this division would violate State or Federal laws. A Contractor that desires such a determination by the City Council shall, at the time it submits its bid or proposal to the City, provide the City with a written request that it desires exemption from the requirements of this division, and a reference to the specific State or Federal laws, if applicable, that would be violated if the City imposed the requirements of this division on the Contractor.

B. The City Council, by a four-fifths vote, may grant a whole or partial exception to the requirements of this division to a Contractor at the time of award of the contract if the City Council determines that the existence of an emergency or other extraordinary circumstances (such as the creation of training positions that will enable employees to advance into permanent living wage jobs or better) justifies an exemption from the requirements of this division. Exemptions pursuant to this subsection are disfavored and shall be granted only when a balancing of competing interests weighs clearly in favor of granting an exemption, in the sole and absolute discretion of the City Council. If an exemption is to be granted, a partial exemption is favored over a whole exemption, and limits on the duration of the exemption are favored as well.

Section 2-6-108. Duties of Director of Administrative Services.

A. The Director of Administrative Services, or his or her designee, shall have the authority to perform the following acts for purposes of accomplishing the intent of this division and as deemed necessary or appropriate in the Director's judgment:

- (1) Review, investigate and/or maintain records of



complaints alleging that the Contractor has violated the requirements of this division.

(2) Perform random audits of the Contractor's and/or the Contractor's subcontractor's records to verify compliance with this division.

B. Upon determining that a Contractor is operating in accordance with the requirements of this division, the Director of Administrative Services shall furnish the Contractor with a written recognition and acknowledgment of such compliance.

Section 2-6-109. Contractor Notice Posting Requirements.

A. A Contractor subject to the requirements of this division shall post in a conspicuous place, as required by State and Federal laws for other notices to employees, a copy of the notice referred to in this division, a sample of which is provided as part of the contract documents. The Contractor is responsible for notifying and requiring compliance from any subcontractors retained by Contractor, to perform any or all functions covered by the contract.

B. A Contractor subject to the requirements of this division shall post in a conspicuous place, as required by State and Federal laws for other notices to employees, a notice of potential Federal Earned Income Tax Credit (EITC) eligibility for covered employees.

Section 2-6-110. Retaliation and Discrimination Prohibited.

No Contractor shall discharge, reduce the compensation of or otherwise discriminate or retaliate against any of its employees for making a complaint to the City, asserting the employee's rights or assisting another employee in making a complaint or asserting his or her rights under this division.

Section 2-6-111. Complaint Process for Violations.

A. Any covered employee may lodge a written complaint with the Director of Administrative Services or his/her designee that a Contractor or subcontractor has violated the requirements of this division.

B. Upon receipt of such a complaint, the Director of Administrative Services, or his/her designee, shall review and investigate at his/her discretion, the complaint and determine if the Contractor should be issued a preliminary notice of violation, which shall also contain the corrective measures the Contractor is required to undertake and/or the

remedies that are being imposed. If the Contractor does not file a timely and sufficient appeal to the preliminary notice of violation, it shall become final and conclusive.

C. If a Contractor receives a notice of violation, the Contractor may request in writing an appeal hearing before the Director of Administrative Services, or his/her designee, to dispute the violation and/or corrective measures and/or remedies required. The request for an appeal hearing shall be filed with the City Clerk within fifteen (15) days of the date the Director of Administrative Services issued the preliminary notice of violation, and shall contain the reasons why the Contractor believes that a violation does not exist and/or that the corrective measures and or remedies are not appropriate. The Director of Administrative Services or his/her designee shall conduct the appeal hearing within forty-five (45) days of receipt of the appeal request. Within fifteen (15) days of the conclusion of the appeal hearing, the Director of Administrative Services shall issue his/her findings and final decision with respect to the appeal hearing

D. A Contractor may appeal the final decision of the Director of Administrative Services to the City Council by filing a written notice of appeal within fifteen (15) days of the date of the Director's final written decision. The City Council shall conduct a hearing on the appeal within forty-five (45) days of its receipt of the appeal request and either uphold, overturn or modify the Director's final decision.

Section 2-6-112. Remedies of City for Violations.

A. The City may impose any or all of the following corrective measures and/or remedies against a Contractor for violations of this division:

(1) Order the Contractor to comply with all regulations of this Section within sixty (60) days.

(2) Order payment to covered employees to compensate the employees up to the compensation level required by this division.

(3) Suspend payments for and/or suspend or cancel contracts between the City and the Contractor.

(4) Render the Contractor ineligible to enter into contracts with the City for a period of three (3) years or until all restitution to covered employees has been paid, whichever is longer.

B. In addition to the above corrective measures and/or

remedies, the City shall be entitled to seek any and all other equitable and legal rights it may have under Federal, State and local laws, including without limitation injunctive relief, for purposes of enforcing the remedies set forth above.

Section 2-6-113 . Remedies of Covered Employees for Violations.

A. A covered employee shall have the right to seek the following remedies against a Contractor violating the provisions of this division in a court of competent jurisdiction:

(1) Restitution to compensate the employee for all amounts that should have been paid to the employee pursuant to this division.

(2) Reasonable attorneys' fees and costs.

(3) Any and all other legal and equitable remedies available under Federal, State and local laws.

SECTION 2. If any portion of this Ordinance, or the application of any such provision to any person or circumstances; shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

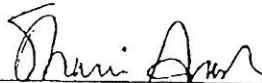
SECTION 3. The City Council determines that pursuant to Title 14, California Code of Regulations Section 15061, this project is exempt from the California Environmental Quality Act because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 4. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 12<sup>th</sup> day of June, 2007.

  
MAYOR OF THE CITY OF IRVINE

ATTEST:

  
CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF IRVINE )

I, SHARIE APODACA; City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on May 22<sup>nd</sup>, 2007, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 12<sup>th</sup> day of June, 2007, by the following vote:

AYES: 3 COUNCILMEMBERS: Agran, Kang, and Krom  
NOES: 2 COUNCILMEMBERS: Choi and Shea  
ABSENT: 0 COUNCILMEMBERS: None

  
CITY CLERK OF THE CITY OF IRVINE

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)  
COUNTY OF ORANGE ) ss  
CITY OF IRVINE )

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that on the 22<sup>nd</sup> day of June 2007, I caused to have posted the foregoing true and correct copy of Ordinance No. 07-15 of the City of Irvine in the following public places in the City:

- 1) Bulletin Board in Walnut Village Shopping Center, Culver and Walnut, Irvine.
- 2) Bulletin Board in University Park Shopping Center, Culver at Michelson, Irvine.
- 3) Bulletin Board in Northwood Shopping Center, Irvine Boulevard at Yale, Irvine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City Council of the City of Irvine, California, the 22<sup>nd</sup> day of June 2007.



CITY CLERK OF THE CITY OF IRVINE



# Appendix B

## DECLARATION OF COMPLIANCE Living Wage Ordinance

Name of Contractor \_\_\_\_\_

Type of Service \_\_\_\_\_

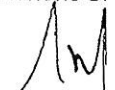
The above-named contractor hereby declares and agrees as follows:

1. I have read and understand the requirements set forth by the City's Living Wage Ordinance (the "Ordinance") that has been provided by the City of Irvine ("City") in connection with the City's request for proposals or other invitation or solicitation for the performance of services under a City contract.
2. As a condition of receiving the City contract, I agree to fully comply with all of the requirements specified in the Ordinance. As required by the Ordinance and while under any City contract subject to the Ordinance, I agree to pay no less than the minimum compensation, including the benefit factor rate as applicable, to all "covered employees" as that term is defined by the Ordinance.
3. If the amount of this City contract is less than one hundred thousand dollars (\$100,000), then as a condition of receiving this contract, I agree to notify the City in writing if the aggregate value of multiple City contracts covered by the Ordinance, including amendments to this contract, is one hundred thousand dollars (\$100,000) or more within any consecutive 12-month period.
4. I acknowledge and agree that the Ordinance, and this Declaration, shall constitute part of the City contract, and that these provisions shall govern in the event of any conflict with any other provisions of the contract.
5. I further acknowledge and agree that any violation of the Ordinance constitutes a material breach of City contract, and that if such a breach occurs, the City may avail itself of any or all of the remedies for violations that are provided by the Ordinance.
6. I acknowledge and understand that retaliation and/or discrimination against any employee making a complaint to the City, asserting his or her rights or assisting another employee in making a complaint, constitutes a violation of the Ordinance. In addition, I understand that violated employees may seek any or all of the remedies that are provided by the Ordinance.
7. If requested by the City, I agree to promptly submit certified payroll and/or benefits documents to the City for my firm and/or subcontractor(s) as requested by the City, and shall take any other steps as may be required by the City to ensure that my firm and my subcontractor(s) have complied with the Ordinance. The documents requested may include, but are not limited to, covered employee timesheets, gross pay calculations, pay registers, cancelled checks, medical and dental insurance invoices, paid time off policies, and other related payroll or benefit documents.
8. I agree to require all subcontractors who I retain to perform any or all of the work or services covered by this contract to comply with the requirements of the

Ordinance, and I shall include the requirements of the Ordinance in all subcontracts covered thereby.

9. I agree to post in a conspicuous place, as required by State and Federal laws for other notices to employees, a notice informing covered employees of their rights under the Ordinance and a notice of potential Federal Earned Income Tax Credit (EITC) eligibility for covered employees.
10. I have received the "Living Wage Guide" from the City, explaining the specific requirements of the Ordinance in detail.
11. I agree to defend, indemnify, and hold harmless the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorneys' fees) or other liabilities of any kind arising from any violation of the City's Living Wage Ordinance, by my firm or by any subcontractor retained by my firm to perform work or provide services under the City contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.

  
\_\_\_\_\_  
Signature of Authorized Representative

9/17/2012  
\_\_\_\_\_  
Date: (Month/Day/Year)

Print Name: Stewart Mollrich

Title: VICE PRESIDENT



## Appendix C

### City of Irvine Living Wage Guide

#### Living Wage Description

##### What is the City of Irvine's Living Wage Ordinance?

The Living Wage Ordinance requires a Contractor entering into City contracts subject to the Ordinance to pay its covered employees an hourly rate, comparable health benefits and paid time off (such as vacation, sick and holiday paid time off) as set by the most current City Council Resolution (Resolution) establishing compensation policy for employees. These benefits are summarized in the Living Wage Comparable Benefits Summary included with this document.

**Current hourly and benefit factor rates, along with other Living Wage Ordinance information, is available on the City of Irvine web site at [www.cityofirvine.org](http://www.cityofirvine.org). Click on the "Doing Business" tab at the top of the screen, and then select "Living Wage Info."**

The purpose of the Ordinance is to ensure that employees of City services Contractors can earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The use of City funds to create living wage jobs is intended to decrease poverty, increase consumer income, invigorate community businesses and reduce the need for taxpayer-funded social service programs.

#### Contractors and Contracts Subject to the Living Wage Ordinance

##### Which Contractors are subject to the Living Wage Ordinance?

"Contractor" means any person or business that enters into a new service contract or any service contract with the City (including the Orange County Great Park Corporation) and all other City agencies, departments and offices) that is amended, renewed or extended after July 12, 2007 except for those bids, RFP's and contracts that were in process on that date.

The term "Contractor" shall include all subcontractors retained by a Contractor to perform any or all of the functions covered by the contract.

##### Which contracts are subject to the Living Wage Ordinance?

All services contracts greater than \$100,000 over a 12-month period are subject to the Living Wage Ordinance. A contract shall be subject to the Living Wage Ordinance if the aggregate value of multiple contracts with the City, including amendments to contracts, is \$100,000 or more in a consecutive 12-month period.

#### Employees Covered Under the Living Wage Ordinance

##### Who is a "covered employee"?

"Covered employee" means (1) any employee whose services fulfill the Contractor's contractual obligations for contracts with the City that are subject to this Ordinance and (2) any other employee of the Contractor who performs a majority of his or her services within Orange County. Volunteers are not considered "covered employees" under the Ordinance.

##### Are both part-time and full-time employees covered under the Living Wage Ordinance?

The City does not provide health benefits or paid time off for City employees working less than 30 hours per week on average. Accordingly, there is no current requirement for a Contractor to pay a "benefit factor rate" for its part-time employees who work less than 30 hours a week on average.

## Compensation Required Under the Ordinance

### What base hourly rate must I pay "covered employees"?

The current City Council Resolution sets the minimum hourly rate. This is the rate at which an employee must be paid if the Contractor also provides the employee with health benefits and paid time off that are equal to or exceeding those offered to City employees, as detailed in the current City Council Resolution. Rates generally change in July of each year. All rate changes will be posted on the City's web site and Contractors are responsible for monitoring all changes and for notifying their subcontractors of those changes.

### What if my employees are under a collective bargaining agreement or if I am paying my employees prevailing wages?

In the event that collective bargaining agreements and/or prevailing wage requirements are higher than the current living wage rates as set forth in the Ordinance, collective bargaining and/or prevailing wage rates must be paid to covered employees.

### What minimum health and paid time off benefits are offered to City employees?

The selection of benefits of all salary classifications is set forth by the most current City Council Resolution establishing compensation for City employees. Currently, minimum City health benefits include an option for employees to enroll in the City's indemnity medical insurance plan or the Health Maintenance Organization (HMO), and the option to enroll in a dental plan. City benefits also include pro-rata paid time off such as sick, vacation, and holiday pay. A summarization of these benefits is included in the Living Wage Comparable Benefit Summary.

### What if I don't offer my employees comparable health and paid time off benefits?

An additional "benefit factor" must be added to the base hourly rate if employees are not offered health and paid time off benefits equal to or exceeding those offered to City employees, as detailed in the current City Council Resolution and summarized in the Living Wage Comparable Benefit Summary. The current benefit factor must be added to the base minimum rate to reach the total minimum rate for covered employees.

If the cost of health and paid time off benefits provided to your employees cost you less than the current benefit factor, the difference between what you pay and the benefit factor must be added to the base minimum rate to achieve the total hourly compensation that must be paid to the covered employees.

All rate changes will be posted on the City's web site. Contractors are responsible for monitoring all changes and for notifying their subcontractors of the changes.

### How is the benefit factor calculated and how often is it updated?

The methodology for calculating the benefit factor is based on the actual cost to the City for providing those benefits to employees. The rate is updated as benefit costs change, generally in July of each year. All rate changes will be posted on the City's web site. Contractors are responsible for monitoring all changes and for notifying their subcontractors of the changes.

### How do I calculate the benefit factor I am currently paying my employees?

Take the total annual cost you pay, or offer to pay, as the employer for the benefits offered to your employees including health insurance and paid time off benefits, and then divide by 2,080 (the number of hours in a year).

### Where do I find the current rates?

Rates may be found on the City's web site, at [www.cityofirvine.org](http://www.cityofirvine.org). Click on the "Doing Business" tab at the top of the screen, and then select "Living Wage Info." You may also call the Purchasing Department at 949-724-6180.

Rates are subject to change and it is the Contractor's responsibility to monitor and update payroll records to accommodate rate changes when applicable. In addition, Contractors are responsible for notifying and ensuring compliance with these requirements by subcontractors retained by the Contractor to perform any or all functions covered by the contract.

## Other Requirements under the Ordinance

What other requirements must I meet under the Ordinance?

You are required under the Ordinance to:

- Post in a conspicuous place, as required by State and Federal laws for other notices to employees, a copy of the notice referred to in the Ordinance that informs covered employees of their rights under the Ordinance. A copy will be provided to you with your contract documents and is also available on the City's web site.
- Post in a conspicuous place, as required by State and Federal laws for other notices to employees, a copy of the notice referred to in the Ordinance that informs covered employees of their potential eligibility for Federal Earned Income Tax Credit (EITC). Provide notification of all of the requirements of the Ordinance to any subcontractors retained by you to perform any or all of the functions covered by the contract; and ensure compliance to the Ordinance.
- You are required to monitor and update your payroll records to accommodate Living Wage minimum wage and benefit factor rates when applicable.
- **You are required to contact the City in writing if you are awarded additional contracts and the aggregate value of your contract(s) with the City, including amendments to your contract(s), is \$100,000 or more in a 12-month period. Such notification should be sent to: Purchasing Agent, City of Irvine, PO Box 19575, Irvine, CA 92623-9575**

You are **prohibited** under the Ordinance to discharge, reduce the compensation, discriminate or retaliate against any employee for making a complaint to the City, asserting his or her rights or assisting another employee in making a complaint or asserting his or her rights under the Ordinance.

## Compliance and Violations

**How is the Living Wage Ordinance enforced?**

Any covered employee may lodge a written complaint and/or the Director of Administrative Services may at any time review, investigate and/or perform random audits of the Contractor's records to verify compliance with the Ordinance.

**If I am audited what documents might I be asked to provide?**

Specific documents that may be reviewed include, but are not limited to, covered employee time cards, gross pay calculations, pay registers, canceled checks, medical and dental insurance invoices, paid time off policies, required postings and other related payroll or benefit documents.

**What happens if it is determined that I am not in compliance with the Ordinance?**

The City may impose any or all of the following corrective measures for violations of the Ordinance:

- Order Contractor to comply within 60 days
- Order payment to covered employees to compensate the employee for amounts that should have been paid under the contract
- Suspend payments to the Contractor for the contract in violation
- Cancel the City contract in violation
- Render the Contractor ineligible to enter into contracts with the City for a period of three years or until all restitution to covered employees has been paid, whichever is longer
- Seek all other equitable and legal rights under Federal, State and local laws, including injunctive relief

**Is there an appeal process?**

If it is determined that the Contractor is not in compliance, the Contractor will be issued a preliminary notice of violation that contains the corrective measures required by the Contractor. The Contractor may request in writing an appeal hearing before the Director of Administrative Services to dispute the violation and/or the corrective measures. The request for appeal hearing must be filed with the City Clerk within fifteen (15) days of the date of the preliminary notice of violation and must contain the reasons the Contractor believes that a violation does not exist and/or that the corrective measures or remedies are not appropriate.

The Director of Administrative Services will conduct the appeal hearing within forty-five (45) days of receipt of the appeal request. Within fifteen (15) days of the conclusion of the appeal hearing, the Director of Administrative Services will issue his/her findings and final decision.

The final decision of the Director of Administrative Services may be appealed to the City Council by filing a written notice of appeal within fifteen (15) days of the date of the Director's final written decision. The City Council shall conduct a hearing on the appeal within forty-five (45) days of its receipt of the appeal request and either uphold, overturn or modify the Director's final decision.

**How does a covered employee file a complaint if they believe that a Contractor or subcontractor is in violation of the Ordinance?**

A Covered employee who believes a Contractor or subcontractor has violated the requirements of the Ordinance may file a written complaint with the Director of Administrative Services.

**What remedies for violation do covered employees have under the Ordinance?**

A covered employee may seek the following remedies against a Contractor violating the Ordinance:

- Restitution to compensate the employee for amounts that should have been paid under the contract
- Reasonable attorneys' fees and costs
- Any and all other legal and equitable remedies available under Federal, State and local laws

## Exceptions

**Are there any circumstances in which an exception to the Ordinance will be granted?**

The City Council, by a majority vote, may grant a whole or partial exception at the time of award of the contract if it is determined that imposition of this Ordinance would violate State or Federal laws. A Contractor that desires an exception must, at the time of the bid proposal, provide the City with a written request with a reference to the specific State or Federal law that would be violated.

The City Council, by a four-fifths vote, may grant a whole or partial exception if it is determined that an emergency or extraordinary circumstance justifies an exemption.

## More Information

**Where can I view more information about the Ordinance?**

More information may be found concerning the Living Wage Ordinance, including current rates, by visiting the City's web site at [www.cityofirvine.org](http://www.cityofirvine.org). Click on the "Doing Business" tab at the top of the screen, and then select "Living Wage Info."

## Contact Information

To receive a copy of the Living Wage Guide, or to ask questions about the Living Wage Ordinance, please contact:

Purchasing Department  
City of Irvine  
PO Box 19575  
Irvine, CA 92623-9575

Phone: (949) 724-6180  
FAX: (949) 724-6187

Employees registering a complaint against an employer should contact:

Director of Administrative Services  
City of Irvine  
PO Box 19575  
Irvine, CA 92623-9575

Phone: (949) 724-6255  
FAX: (949) 724-6030



# Appendix D

## Living Wage Comparable Benefits Summary

The following benefits are offered to City of Irvine employees who work a minimum of 30 hours per week on average. Contractor employees must be offered benefits equal to or greater than the benefits detailed below or the Contractor is required to add a "benefit factor" to the minimum wage paid to the employee as defined in the Living Wage Ordinance.

### Medical Insurance:

- a. Health Insurance:  
The City provides the option to employees to enroll in an indemnity medical insurance plan or Health Maintenance Organization (HMO).
- b. The total cost to the City for medical insurance coverage for employee only shall not exceed 50% of the monthly premium. Employees are responsible for the cost of the remaining premium amount.
- c. The City provides the option to employees, who have enrolled in the HMO plan, to purchase HMO medical insurance for their dependents. The total cost of the additional premium is borne by the employee.
- d. The City provides the option to employees to enroll in a dental Health Maintenance Organization for employees only. The total cost is borne by the employee.

### Vacation:

Vacation benefits accrue on a monthly basis as follows:

<u>Years of Service</u>	<u>Annual Vacation Credits</u>
1 through 3	60 hours
after 3 through 10	90 hours
after 10 years or more	120 hours

### Personal Sick Leave:

Employees accrue personal sick leave credits at the rate of six (6) hours per month.

### Holidays:

Employees are paid for the hours they are regularly scheduled to work on holidays observed by the City.

# Appendix E



## LIVING WAGE ORDINANCE

### NOTICE TO EMPLOYEES

This employer has one or more contracts with the City of Irvine. Terms of the contract(s) subject the employer to the City of Irvine Living Wage Ordinance No. 07-15. Under the Ordinance you must be paid a "living wage" by the employer if a majority of your work is performed in Orange County.

### THESE ARE YOUR RIGHTS

You must be paid a minimum of:

- \$10.82 per hour
- If you work an average of 30 hours per week or more, you must be paid a minimum of:
- \$10.82 per hour
  - If health and paid time off benefits are offered to you
- OR
- \$13.13 per hour:
  - If no health or paid time off benefits are offered to you
  - If the cost of health and paid time off benefits provided to you cost your employer less than \$2.31 per hour, the difference is added to the minimum hourly wage listed above
- Rates are generally adjusted annually. Current rates are effective as of July 1, 2012.
- Retaliation by your employer is **prohibited**
- Employers may not fire, reduce pay, or discriminate against a worker for filing a complaint

If your rights are violated you could receive:

- Restitution to compensate you for all amounts that should have been paid to you under the Ordinance
- Reasonable attorneys' fees and costs

### FOR MORE INFORMATION

To obtain a confidential complaint form if you believe your rights are being violated, please contact:

CITY OF IRVINE  
Director of Administrative Services  
One Civic Center Plaza  
Irvine, CA 92606  
(949) 724-6255

For more information and to review the City Ordinance, Living Wage Guide (frequently asked questions) and updated rates, visit the City's website and access the Purchasing Department, Living Wage page at:

[www.cityofirvine.org/purchasing](http://www.cityofirvine.org/purchasing)

# CONTRACTS SCAN SHEET

CONTRACT NUMBER: 6999A

CONTRACT TYPE: SERVICE

DEPARTMENT: CITY MANAGER  
Department initiating contract

CONTRACT DATE: 07/01/2012  
As stated in Terms section of Contract

EXPIRATION DATE: 06/30/2013  
As stated in Terms section of Contract

MEETING DATE:  
Date of meeting where contract was approved

ITEM NUMBER:  
Item number of meeting where contract was approved

CONTRACT AMOUNT: NOT TO EXCEED \$74,000  
As stated in Budget section of Contract

CONTRACT NAME: TOWNSEND PUBLIC AFFAIRS, INC  
As stated in 1<sup>st</sup> paragraph of contract

CONTRACT SUBJECT: AMMENDMENT OF EXPERATION  
As stated in Description of Services section of contract DATE FROM 06/30/2012 TO  
06/30/2013

ORIGINAL

AMENDMENT NUMBER 1  
TO "AGREEMENT FOR CONTRACT SERVICES"

THIS AMENDMENT NUMBER 1 TO AGREEMENT FOR CONTRACT SERVICES (the "First Amendment") is made and entered into as of July 1, 2012 by and between the CITY OF IRVINE, a municipal corporation ("City") and TOWNSEND PUBLIC AFFAIRS, INC., a California Corporation ("Contractor"), for the purpose of amending the written "Agreement for Contract Services" entered into between City and Contractor as of July 1, 2011, designated as City of Irvine contract number 6999 (the "Agreement").

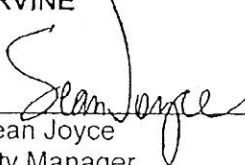
1. The expiration date of the Agreement is changed from June 30, 2012 to June 30, 2013. The not-to-exceed contract value remains \$74,000 annually.
2. Except as set forth in this First Amendment, all terms, conditions and provisions of the Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to the Agreement to be executed by their respective duly authorized agents as of the date first set forth above.


CITY OF IRVINE

TOWNSEND PUBLIC AFFAIRS, INC.

By:

  
Sean Joyce  
City Manager

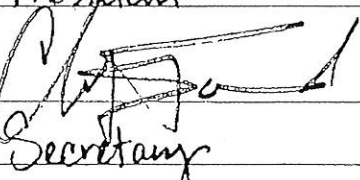
By:

  
President

Its:

Its:

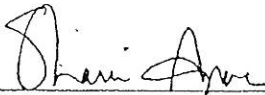
By:

  
Secretary

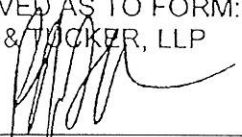
Its:

Attest:

By:

  
Sharie Apodaca  
City Clerk of the City of Irvine

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

  
Philip D. Kohn

6999A

# CONTRACTS SCAN SHEET

CONTRACT NUMBER: 6221C

CONTRACT TYPE: SERVICE

DEPARTMENT: GREAT PARK  
Department initiating contract

CONTRACT DATE: 6/19/12  
As stated in Terms section of Contract

EXPIRATION DATE: 6/30/2013  
As stated in Terms section of Contract

MEETING DATE:  
Date of meeting where contract was approved

ITEM NUMBER:  
Item number of meeting where contract was approved

CONTRACT AMOUNT: NOT TO EXCEED \$120,000  
As stated in Budget section of Contract

CONTRACT NAME: TOWNSEND PUBLIC AFFAIRS, INC.  
As stated in 1<sup>st</sup> paragraph of contract

CONTRACT SUBJECT: AMENDMENT TO EXPIRATION  
As stated in Description of Services section of contract DATE, "PART IV, SCOPE OF SERVICES" AND "PART V, BUDGET"

ORIGINAL

AMENDMENT NUMBER 3  
TO "AGREEMENT FOR CONTRACT SERVICES"

THIS AMENDMENT NUMBER 3 TO AGREEMENT FOR CONTRACT SERVICES (the "Third Amendment") is made and entered into as of June 19, 2012 by and between the City of Irvine, a municipal corporation ("City") and Townsend Public Affairs, Inc., a California corporation ("Contractor"), for the purpose of amending the written "Agreement for Contract Services" entered into between City and Contractor as of June 24, 2009, City of Irvine contract number 6221 (the "Agreement").

1. The expiration date of the Agreement is changed from June 30, 2012 to June 30, 2013.
2. "PART IV, SCOPE OF SERVICES" is modified by adding EXHIBIT I, attached hereto.
3. "PART V, BUDGET" is modified by adding the following:

The budget for the fiscal period July 1, 2012 to June 30, 2013 shall be a fixed fee of \$10,000 per month. New annual contract not-to-exceed value is \$120,000.
4. Except as set forth in this Third Amendment, all terms, conditions and provisions of the Agreement are unchanged and remain in full force and effect.

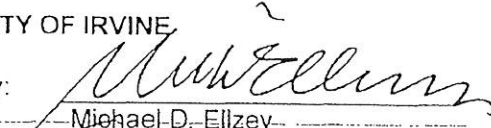
(Signatures follow on next page)



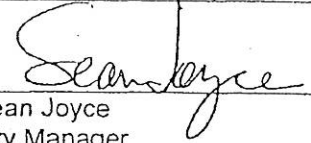
IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Agreement to be executed by their respective duly authorized agents as of the date first set forth above.


CITY OF IRVINE

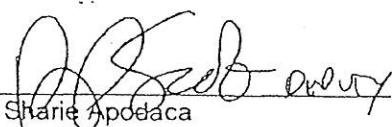
TOWNSEND PUBLIC AFFAIRS, INC.

By:   
Michael D. Ellzey  
Its: Chief Executive Officer  
O.C. Great Park Corp.

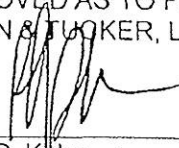
By:   
President

By:   
Sean Joyce  
Its: City Manager

By:   
Secretary

Attest:  
By:   
Sharie Apodaca  
City Clerk of the City of Irvine

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

  
Philip D. Kohn

## EXHIBIT I

### SCOPE OF SERVICES

#### Local and State Advocacy

---

##### Funding Advocacy

Townsend Public Affairs provides funding support to Orange County Great Park (OCGP), specific to the following activities at the State level:

- Develop and implement a funding agenda for the OCGP.
- Identify potential funding sources related to the OCGP's established capital and programmatic needs and craft a comprehensive strategy to pursue these opportunities. TPA will also secure and furnish such detailed information as may be available on state issues in which the OCGP indicates an interest.
- Review and comment on legislative proposals and grant applications of the OCGP which are being prepared for submission to state agencies.
- Utilizing our strong relationships with officials among the various state agencies and departments to ensure that the Park's applications are aligned with the goals of each program, and that the applications are well-crafted and well-positioned for funding;
- Ensuring that the OCGP responds to any follow up questions from the administering agency regarding the Park's application(s);
- Contacting key legislators and staff members to ensure their support for the project;
- Facilitating briefings with the key stakeholders of the funding opportunity, including, but not limited to, important department officials and/or elected officials;
- Coordinating outreach to relevant community associations and groups in support of the project;
- Organizing advocacy trips to Sacramento to promote the OCGP's projects and priorities; and
- Providing regular updates on the evaluation process until the announcement of the awards.

##### Legislative Advocacy

Townsend Public Affairs provides legislative support to the OCGP, specific to the following activities at the State level:

- Represent OCGP in Sacramento on all legislative, policy and regulatory planning and programming activity of interest to the Park.
- Develop and implement a State legislative agenda for the OCGP.

- Review and advise the OCGP on potential implications related to state proposals and legislation under consideration, proposed and adopted administrative rules and regulations, and other Sacramento developments.
- Maintain a close working relationship with the OCGP's state legislative delegation and other appropriate state legislators, including the Governor and legislative leadership.
- Work with the OCGP regarding appearance by the Park leadership and staff before legislative committees and administrative agencies. TPA will also arrange for meetings and accommodations for OCGP personnel as necessary.
- Develop appropriate materials for meetings and maintain records through:
  - Preparing agendas, memos, talking points, and other materials for calls, meetings, etc.;
  - Developing relevant support materials; and
  - Providing regular updates regarding advocacy and public policy activities.

TPA will closely monitor and advocate for OCGP on the following items of interest:

- Potential Impacts of the Governor's 2012-2013 State Budget
- Clean-up legislation related to the CA Supreme Court's decision regarding Redevelopment.

### Federal Advocacy

#### Funding Advocacy

Townsend Public Affairs provides funding support to OCGP, specific to the following activities at the Federal level:

- Develop and implement a funding agenda for the OCGP.
- Identify potential funding sources related to the OCGP's established capital and programmatic needs and craft a comprehensive strategy to pursue these opportunities.
- Review and comment on grant applications of the OCGP which are being prepared for submission to federal agencies.
- Utilizing our strong relationships with officials among the various federal agencies and departments to ensure that the Park's applications are aligned with the goals of each program, and that the applications are well-crafted and well-positioned for funding;
- Ensuring that the OCGP responds to any follow up questions from the administering agency regarding the OCGP's application(s);
- Contacting key legislators and staff members to ensure their support for the project;
- Facilitating briefings with the key stakeholders of the funding opportunity, including, but not limited to, important department officials and/or elected officials;
- Coordinating outreach to relevant community associations and groups in support of the project;

- Organizing advocacy trips to Washington, DC, to promote the OCGP's projects and priorities; and
- Providing regular updates on the evaluation process until the announcement of the awards.

### Legislative Advocacy

Townsend-Public-Affairs-provides-legislative-support-to-the-OCGP-specific-to-the-following activities at the Federal level:

- Develop and implement a Federal legislative agenda for the OCGP.
- Monitor, analyze and make recommendations on pending Federal legislation and regulation that affects the OCGP by:
  - Maintaining regular contact with selected congressional staff;
  - Monitoring selected hearings and committees; and
  - Interacting with senior officials at selected Federal Agencies.
- Develop appropriate materials for meetings and maintain records through:
  - Preparing agendas, memos, talking points, and other materials for calls, meetings, etc.;
  - Developing relevant support materials; and
  - Providing regular updates regarding advocacy and public policy activities.
- Implement OCGP's federal agenda by means of:
  - Visiting congressional offices on a regular basis and providing information on issues of concern; and
  - Coordinating and developing all advocacy activities related to the Park's legislative needs and formal positions.
- Other related assignments, as mutually agreed upon by both parties.

### Solar Decathlon

In addition to legislative and funding advocacy, TPA provides support to OCGP, specific to the following activities with the 2013 Solar Decathlon:

- Participate in regular planning and fundraising discussions with Great Park staff and consultants;
- Develop and implement a targeted outreach campaign to public agencies for potential sponsorship, marketing, and volunteer support;
- Develop and implement an elected official outreach strategy for the event; and
- Facilitate and participate in briefings for local, state, and federal elected officials regarding the Solar Decathlon.

RECEIVED

DEC 31 2012

CITY OF IRVINE  
CITY MANAGER'S OFFICE

# Memo

To: Sean Joyce, City Manager  
From: Councilmember Christina Shea  
Date: December 31, 2012  
Re: Request City Council approval to issue a Request for Proposals (RFP) for a Contract Compliance/Forensic Audit of Great Park Contracts, including any and all Work Efforts Associated with the Great Park

---

Please place the above-indicated items on the January 8, 2012 agenda for City Council for consideration and discussion.

This coming June, it will be 10 years since the Irvine City Council established the Orange County Great Park Corporation as a non-profit organization charged with the design, construction, and maintenance of the Orange County Great Park.

In July, 2005, the City was presented with the first installment of developer fees. Since then, the Corporation has spent more than \$200 million.

However, with the exception of only one interim compliance audit (which was immersed in controversy), there have only been the standard City audits to monitor the spending.

I propose that we direct staff to solicit proposals to complete a contract compliance and forensic audit of all of the Corporations contracts and work effort, from July 2005, through the end of 2012, and that we award the contract to the best qualified firm, with reasonable pricing. It is my hope that this comprehensive audit can be completed at a cost from \$225,000 to \$250,000. I recommend that the City Council appropriate \$250,000 from Great Park reserves for project funding at this time while we await receipt and review of proposals from qualified firms.

Such audits will ease any public concerns about the contracts, expenditures (perhaps, revealing possible deficiencies), and indicate areas where we might improve the structuring and monitoring of future contracts.

A compliance audit will assure us that all costs charged to a contract and all work efforts are valid, and whether there are regulatory, or contract noncompliance issues to be resolved. It is

ATTACHMENT 3 TO RESPONSE LETTER

my intent that work performed outside of contracts, if any, be disclosed and tested by the auditor for compliance with applicable City policies.

A forensic audit will authoritatively let the public, and the City understand where the money was spent and what is remaining for future planning. Essentially, we will be creating a fiscal baseline, to use as we move forward to develop the Park.

Together, these audits should:

- Provide a comprehensive review of all work efforts, including programming, contracts and contractors (including sub-contractors).
- Determine that all deliverables under the contract terms have been received,
- Ensure all City policies, procedures and fiscal controls were followed, for all contracts and work effort.
- Create a financial baseline of what has been spent and what actually remains of all revenues.

Lastly, I propose that the City Council create a subcommittee of two City Council members. That subcommittee, supported by City staff, will work with the audit firm, receive periodic updates of findings, and bring information to the full Council. I will serve on the subcommittee, and would like the Mayor or another Council member to serve with me.

In summary, I recommend that the City Council approve the following:

1. Solicit proposals for the performance of a comprehensive contract compliance/forensic audit of Great Park contracts, including any and all work efforts associated with the Orange County Great Park, the draft scope of which will be presented for consideration January 8, 2013;
2. Appropriate \$250,000 from the Orange County Great Park reserves (Fund 180 fund balance);
3. Appoint a two-member City Council subcommittee to work with the auditor to receive periodic updates of findings, and bring information to the full Council. I volunteer to serve on the subcommittee.

Thank you for your attention to this matter.

cc: City Council  
City Attorney  
City Clerk